



STATE OF WYOMING  
HOUSE OF REPRESENTATIVES  
SELECT INVESTIGATIVE COMMITTEE

# REPORT OF THE SELECT INVESTIGATIVE COMMITTEE

**July 23, 2014**

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## **I. EXECUTIVE SUMMARY**

The Select Investigative Committee (“Committee”) investigated allegations concerning Superintendent Hill and the Wyoming Department of Education for almost a year, reviewed millions of pages of documents and received hours of witness testimony. All of these investigative activities resulted in this Report. Section III of the Report (Areas of Investigation and Findings) contains extensive background information and references to activities that the Committee found most troubling. That section of the Report is necessarily detailed, and in some ways, technical. The Committee provides this Executive Summary so that readers of the Report may become familiar with the basic issues the Committee investigated and the Committee’s abbreviated findings on those issues. Following each subsection in the Executive Summary is an internal citation to the pages in the Report where the Committee’s full discussion can be found.

### **A. TEACHER TO TEACHER PROGRAMS**

Wyoming’s Constitution and statutes are very clear about the proper method for creating and funding new initiatives within Wyoming government. The Legislature is constitutionally charged with appropriating all funds in the treasury and no executive official can fund his or her own initiatives without legislative appropriation. Superintendent Hill was responsible for ensuring that no expense of any kind was created by the WDE unless that amount was appropriated by the Wyoming Legislature.

In 2011, WDE created home-grown professional development programs, including programs named 3+8 and the Writing Workshop. A Teacher-to-Teacher (“T2T”) concept was used in each program. These programs represented a new initiative by the recently established Hill Administration to focus significant WDE resources toward literacy professional development. WDE had no legislatively approved funding for these programs or authorization to run the programs. Funds were diverted from other legislatively authorized accounts to run the programs.

In December 2011, the Joint Appropriations Committee (“JAC”) learned of the new programs. Dissatisfied with this unauthorized spending on professional development, the Legislature passed footnote 3 to 2012 Wyoming Session Laws Chapter 26, Section 5 (2012 Original Senate File 1, popularly known as the “Budget Bill”). Pursuant to the footnote, WDE trainings using T2T were prohibited through comprehensive defunding. The legislative directive was clear, the T2T program was not authorized, and no funds were to be used to fund new programs which were not lawfully authorized.

Following the 2012 legislative session, WDE continued its T2T programs under a new name: Special Education Literacy Program (“SpLiT”). The new SpLiT trainings focused on very similar areas of instruction as prior T2T trainings had done. JAC learned that the new SpLiT program was started following the passage of the 2012 Budget Bill, despite the budgetary footnote specifying that such programs were to be discontinued.

Superintendent Hill and her leadership team<sup>1</sup> have attempted to justify the continuation of T2T programs after passage of the 2012 Budget Bill footnote by claiming that the footnote language was unclear and that nothing in the footnote prohibited them from continuing their T2T-based programs with funds not withdrawn by the footnote. The Committee is not persuaded by these arguments. WDE had ample notice of the Legislature's intent for WDE to cease offering Teacher to Teacher trainings.

The Committee finds that the Department, at the direction of Superintendent Hill, attempted to hide the fact that Teacher to Teacher programs were still being offered by the Department after the passage of the 2012 Budget Bill footnote. The Committee concludes that, under Superintendent Hill's leadership, WDE concealed its use of T2T by changing the name of its various professional development programs that used T2T in violation of Wyoming law and the Wyoming Constitution.

The evidence also suggests that leadership at WDE attempted to mislead the Legislature by ordering the scrubbing of certain financial reports to remove all references to T2T. JAC formally requested from WDE a detailed summary of all payments made on professional service contracts, including payments made to contractors performing services related to T2T programs. The initial report showed a number of instances in which WDE made payments to contractors for services related to T2T. After submitting the initial report for review within WDE, WDE finance personnel were called to a meeting with Superintendent Hill and members of her leadership team. At that meeting, WDE leadership directed finance personnel to remove all references to T2T, SpLiT, 3+8 and Wyoming Reads. The Committee has compared the initial report and the subsequent, scrubbed report. Based on this comparison and the sworn testimony, it is apparent to the Committee that the final financial report submitted to the Legislature was scrubbed of all references to T2T and T2T-related programs and was made not to match the source documents contained in the State's Wyoming Online Financial System database.

The evidence shows that SpLiT workshops were paid for, in part, with Wyoming's State Personnel Development Grant ("SPDG"). The expenditure of Wyoming's SPDG grant monies was restricted to professional development related to special education. While being funded with special education SPDG funds, the evidence strongly suggests that WDE's SpLiT trainings were focused on general education/balanced literacy concepts, not special education. Warnings and expressions of concern voiced by a number of WDE employees on the use of federal special education funds for general education purposes were ignored by Superintendent Hill and her

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<sup>1</sup> Throughout this Report reference is made to Superintendent Hill's "leadership team." Most of the members of her leadership team were brought into the WDE by Superintendent Hill (the exception being Christine Steele), and included: Sheryl Lain, John Masters, Christine Steele and Kevin Lewis. Roger Clark served as a member of the leadership team from January 2011 through his resignation in June 2011. Sam Shumway became a member of the Hill leadership team in 2012. Jerry Zellars was also considered a member of Superintendent Hill's leadership team. The WDE organizational chart under Superintendent Hill has been described as "mercurial" and members of the leadership team changed job titles during the period from January 2011 through January 2013. For ease of reference, attached to the Report is a sampling of WDE organizational charts during the relevant period. [Exhibit 77.]

leadership team. In fact, Superintendent Hill and her leadership team embarked on an effort to mislead the federal government and compromise the integrity of WDE employees.

**FINDINGS - T2T Trainings:** Essentially, the T2T programs were an unconstitutional growth of government, authorized by Superintendent Hill. The Committee finds that Superintendent Hill created and funded the T2T programs without lawful authorization.

The Committee finds that, despite legislative action to defund and stop T2T professional trainings, Superintendent Hill and her leadership team violated Wyoming's Constitution and statutes by continuing to fund and offer the trainings.

This Committee finds significant evidence indicating that Superintendent Hill and her leadership team attempted to mislead the Legislature concerning WDE's T2T-related expenditures. Superintendent Hill and her leadership team ordered the name of the programs to be changed so they would not be identifiable and then ordered the altering of financial reports which would provide evidence that T2T programs continued after the Legislature ordered WDE to stop offering the programs.

The Committee is gravely concerned with the actions of Superintendent Hill and the leadership team she assigned to handle the funding of WDE's SpLiT workshops. Not only does it appear that the SpLiT workshops were illegally funded, but, as fully discussed later in this Report, WDE's leadership was made aware of the impropriety, ignored the pleas and warnings of experienced staff and required WDE employees to take part in misleading federal grant regulators. The Committee finds that Superintendent Hill continued to implement her statewide T2T professional development programs in complete disregard for all reasonable standards of good management and conduct. The ultimate effect was to divert funds away from special needs children and toward her unauthorized initiatives.

*For the Committee's Complete Report and Findings on T2T See Pages 21 to 37.*

## **B. MANAGEMENT OVERRIDES OF WDE FINANCIAL DIRECTIVES**

As illustrated in the MacPherson Report and the 2013 A-133 Audit, Superintendent Hill and her leadership team had a practice of overriding the objections of the WDE Finance Division.

### **1) Paul Williams Contract**

In August 2011, the WDE entered into a contract with an individual named Paul Williams "to provide the oversight for the statewide assessment system ...."

Williams' original contract with WDE provided payment of \$11,477.78 per month. **There was no maximum number of hours to be worked each month or any provision for overtime in this original contract.** Section 8 M. (General Provisions) of the contract specified: "This Contract ... represents the entire and integrated Contact between the parties and



**supersedes all prior negotiations, representations, and agreements, whether written or oral.”** No provision for the payment of overtime had been provided in the original contract; however, Amendment Number Two to the original contract, executed seven months after the original contract, stipulated that Williams would receive overtime at a rate of \$90 per hour for hours worked in excess of 120 hours a month.

WDE paid a total of \$40,500.00 to Williams in “overtime payments” for services rendered under the terms of the original contract, prior to the effective date of Amendment Two. Superintendent Hill and her leadership team were well aware that these additional payments for services previously rendered constituted a violation of state and federal law and could result in corrective action on the part of the USDE against WDE. They ignored the concerns expressed by the WDE Finance Division and “overrode” those objections to issue the payments. In doing so, Superintendent Hill and her leadership team exhibited a complete disregard for agency internal controls and federal compliance.

**FINDINGS – Paul Williams Contract:** The Committee finds it unreasonable that WDE paid Williams based on a 120 hour month when all full-time State employees of WDE are paid with the expectation that they provide the State of Wyoming with 173.33 hours of work a month.

Federal law requires that federal funds be expended in accordance with State law. The Wyoming Constitution restricts the Legislature, and anyone else, from attempting to appropriate funds for compensation for past official performance. If appropriations must be made by the Legislature, and no bill may be passed giving extra compensation to any public servant, the Constitution cannot be subverted by an elected official who attempts to expend funds without legislative approval. The Committee finds that the payment of overtime authorized under Amendment Two to the Williams Contract for services previously rendered under the Original contract constitutes a violation of state law. Especially concerning is the fact that Superintendent Hill, her legal counsel John Masters, and other members of WDE leadership were made aware of the potential negative consequences of authorizing the payment, but still ordered personnel from the Finance Division to issue payment nonetheless.

Finally, the Committee finds that Superintendent Hill and her leadership team violated 2012 Budget Bill, Section 5, footnote 3(e), by failing to notify the Governor that the \$40,500 requested for Williams’ overtime pay from August 2011 through February 2012 was not “necessary to fund testing and assessment required by law.”

***For the Committee’s Complete Report & Findings on the Williams Contract Issue, See Pages 37 to 44.***

## **2) Shan Anderson Contract**

From August 1, 2011, through November 15, 2011, WDE entered into a contractual agreement with Shan Anderson to provide professional services. The contract between Ms. Anderson and WDE was a sole source contract, meaning that WDE did not put the contract out to bid. The contract was signed on behalf of WDE by Sheryl Lain, a member of Superintendent

Hill's leadership team. Ms. Lain signed the sole source justification letter (bid waiver request) that accompanied the contract.

The Committee is concerned because Shan Anderson is Sheryl Lain's daughter. Ms. Lain did not disclose this fact to the financial personnel to whom the bid waiver request was made. To the extent other leadership team members knew that Shan Anderson was Ms. Lain's daughter, they did nothing to prevent her improper hire.

**FINDINGS – Shan Anderson Contract:** As a member of Superintendent Hill's leadership team and a public employee, Ms. Lain violated Wyoming's laws and policies when she chose to hire her own daughter as a sole source contractor for WDE. Ms. Lain did so without disclosure of her familial relationship with Ms. Anderson and without making any reasonable attempt to justify hiring her daughter with a sole source contract. The fact that the contract was drafted, executed, performed and paid, without objection, is evidence of the type of conduct that was allowed to occur under Superintendent Hill's leadership. Superintendent Hill admitted in testimony before this Committee that it was her responsibility to assure that the members of her leadership team followed the law. Clearly, Superintendent Hill failed in this duty.

*For the Committee's Complete Report and Findings on the Anderson Contract Issue, See Pages 44 to 47.*

### 3) **Victoria Leshar Contract Issues**

Two issues of concern arise regarding treatment of contracts between WDE and Victoria Leshar. Ms. Leshar was awarded a sole-source contract which could have authorized payment approaching \$1,000 per hour, given the limited amount of work performed under the contract. Additionally, portions of her graduate-level education were paid by the State of Wyoming in violation of WDE's reimbursement policy.

**FINDINGS – Victoria Leshar Contract:** Ms. Leshar's contract and tuition reimbursement evidence a situation where Superintendent Hill and her leadership team refused to comply with the law and with rules applicable to their conduct. The Committee finds that though Superintendent Hill did not take part in the process that led to Ms. Leshar's improper reimbursement, it is evidence of her continued failure to properly oversee the operation of the Department and the actions of her own leadership team.

*For the Committee's Complete Report and Findings on the Leshar Contract Issue, See Pages 47 to 49.*

### 4) **A-133 Audit / Management Override**

In March 2014, the Committee received a copy of Wyoming's Statewide Single Audit (Wyoming Compliance Report) for the fiscal year ended June 30, 2013 ("2013 A-133 audit"). The audit is performed to assess each state agency's ability to detect noncompliance with federal program requirements, including federal grant restrictions and rules. In the audits, any

deficiencies in internal controls are identified by two categories: “significant deficiencies” and deficiencies which represent a “material weakness”. While “significant deficiencies” can be serious, a “material weakness” is more serious and is defined to be a deficiency in internal control such that there is a reasonable possibility that material noncompliance with a federal program requirement will not be detected, corrected and prevented on a timely basis.

Wyoming’s 2013 A-133 audit concludes that a number of significant deficiencies existed within WDE’s internal controls during fiscal year 2013. These deficiencies evidence WDE’s violation of federal law and place WDE at risk of facing federal compliance actions. More serious, however, is the fact that the audit discloses “management overrides” during Superintendent Hill’s last year as the head of WDE which constitute a “material weakness” in WDE’s internal controls. **This finding is particularly disturbing because it demonstrates an intentional effort by management to override the internal controls which are meant to guarantee compliance with federal regulations.**

**FINDINGS - A-133 Audit / Management Override:** The audit findings detail an education administration led by Superintendent Hill that cared little about the mandates of federal or state law and which regarded legal and regulatory compliance as a bureaucratic nuisance that could be overridden in favor of blindly pursuing new educational initiatives. The 2013 A-133 audit findings corroborate the testimony of WDE finance personnel who indicated that management override was a problematic method of business under Superintendent Hill’s administration.

*For the Committee’s Complete Report and Findings on the A-133 Audit, See Pages 49 to 52.*

#### **C. ESTABLISHMENT OF A READING PROGRAM AT FREMONT #38**

Beginning summer 2011, the Wyoming Department of Education, under the direction of Superintendent Hill, devoted a large amount of state resources and personnel to implement an intensive one-on-one reading program for struggling readers known as “Wyoming Read” (“WYR”) at Arapahoe Elementary School in Fremont School District #38. No legislative appropriation was made for the program. Superintendent Hill implemented the program with no apparent funding source. WYR was ultimately financed at Fremont #38 by a federal School Improvement Grant (“SIG”), funded by the American Recovery and Reinvestment Act (“ARRA” or “Stimulus Funds”). The use of WYR at Fremont #38, the manner in which WDE employees provided direct student instruction, and issues surrounding the SIG application concern the Committee.

**FINDINGS – WDE Involvement with Fremont #38 School District:** The Committee finds that the actions of Superintendent Hill and her leadership team in implementing WYR at Arapahoe Elementary School in fall 2011 exceeded the authority of the Superintendent and the WDE under state and federal law and regulation. Superintendent Hill and her leadership team ignored the concerns of their own employees who were field experts in federal funding and school district support and instituted WYR at Fremont #38 to the detriment of other Wyoming school districts. They rushed into Fremont #38 without sufficient planning and without first

securing a long-term funding mechanism for the WYR project. Superintendent Hill and her senior leadership team created an environment in which WDE employees had no choice but to perform actions for which they were not properly trained, neglect their own job functions and the needs of other school districts, and provided questionable services to Fremont #38, all in order to promote the implementation of a program with dubious long-term sustainability.

The Committee further finds that WDE could not have impartially evaluated the Fremont #38 SIG application because the WDE had a real and established interest in ensuring that Fremont #38 received SIG funding in an amount sufficient to cover expenses already incurred or anticipated by the premature implementation of the WYR program. This bias towards the Fremont #38 SIG application created an environment in which the SIG application almost *had* to be approved.

*For the Committee's Complete Report and Findings on Fremont #38, See Pages 52 to 60.*

**D. FAILURE TO FOLLOW STATUTES AND EXECUTIVE BRANCH REGULATIONS AND LEGISLATIVE DIRECTIVES.**

**1) Obstructing the Implementation of the 2012 Wyoming Accountability in Education Act.**

In 2011, the Legislature passed Senate File 70 which created W.S. 21-2-204, the Wyoming Accountability in Education Act ("WAEA"). Among other things, the Act was intended to create a statewide system of accountability and to connect accountability to student performance measures. The legislation established the Select Committee on Statewide Education Accountability to oversee the implementation of the WAEA and created an advisory committee comprised of public education representatives and others to assist the Select Committee. Implementation of the legally mandated portions of the WAEA required significant cooperation between the WDE, the Superintendent of Public Instruction, the State Board of Education, the Select Committee and various entities retained for their individual expertise. The WAEA was subsequently amended during the 2012 legislative session by 2012 Session Laws, Ch. 101, which further adjusted the statewide assessment system and refined assessments used for statewide accountability. The amendment also clarified the duties of the Superintendent, the WDE, the State Board of Education, the Select Committee and the advisory committee.

In 2012, the Legislature approved the hiring of two educational liaisons to measure and promote implementation of both the WAEA and 2012 Session Laws Ch. 101. Pursuant to their assigned duties, and to examine the implementation of the WAEA by the WDE, the liaisons issued a report to the members of the Select Committee on Statewide Education Accountability on November 13, 2012. The liaisons found and reported a startling number of instances in which the WDE, under Superintendent Hill's leadership, failed and even refused to comply with statutory mandates.

**FINDINGS – Obstructing the Wyoming Accountability in Education Act:** The Committee concludes that Superintendent Hill engaged in a systematic effort to delay implementation of the WAEA. Most of the parties with a meaningful role in implementing the WAEA reported that obstacles to implementation of the Act were caused by the Superintendent and the WDE. Sworn testimony before the Committee confirmed that the Superintendent's conduct in failing to comply with and implement the WAEA constituted intentional misconduct. Witnesses testified that Hill had indicated that she would do everything she could to thwart external accountability as prescribed by the Legislature. The Committee finds that, rather than seeking to implement the WAEA with fidelity, the Superintendent violated her obligations under the Act and sought to thwart the accountability measures that were central to the Act.

*For the Committee's Complete Report and Findings on Obstructing the WAEA, See Pages 60 to 64.*

## **2) Hiring Persons as At-Will Employees Without Authority**

The Committee investigated the issue of Superintendent Hill reassigning permanent classified positions at the WDE into "at-will" positions. During the first half of 2011, Superintendent Hill made it well-known that she believed all employees in the Department should be classified as at-will so that they could be terminated without cause and with no prior notice. She believed that as Superintendent of Public Instruction, she had the authority to reclassify vacant permanent positions as at-will positions. For a period of time in 2011, Superintendent Hill required every new employee at WDE, including clerical and support staff, to sign letters which acknowledged that their employment was at-will.

On July 5, 2011, Superintendent Hill requested a Wyoming Attorney General's Opinion on this issue. In a formal opinion issued on August 25, 2011, Attorney General Phillips stated unequivocally that Superintendent Hill did not have the authority to reclassify positions in the WDE. Surprisingly, however, Superintendent Hill did not wait for this requested Opinion to be issued before deciding unilaterally that she could reclassify positions on her own. In fact, Superintendent Hill required new employees to sign at-will letters *after the issuance of the Attorney General opinion concluding she lacked authority to do so*. All of these positions had to be converted back to permanent status.

**FINDINGS – Conversion of Positions to At-Will:** Superintendent Hill testified before the Committee that she familiarized herself with the Wyoming State Personnel Rules. Yet, the WDE, on her watch and at her direction, violated these very personnel rules by converting employee positions to at-will status. The Committee finds that the Superintendent Hill's disregard for state personnel rules had the high potential to adversely impact WDE. The Committee finds that the Superintendent likely intended to silence dissenting points of view within the WDE through the implementation of universal at-will employment. Such a policy was intended to ensure complete political and personal loyalty to Superintendent Hill, which was a point that she would describe as absolutely necessary time and again. The Committee finds that it is not credible that Superintendent Hill did not know and authorize this practice. As the



Superintendent herself admitted, as the agency head of WDE, she was responsible for ensuring compliance with State Personnel Rules within the Department. The Committee finds that Superintendent Hill intentionally and knowingly violated the law by requiring employees to sign at-will letters when they were hired in permanent positions.

*For the Committee's Complete Report and Findings on Hiring Employees in At-Will Positions, See Pages 64 to 68.*

### 3) **Demands by Superintendent Hill for Political and Personal Loyalty**

As early as 2011, disturbing accounts of the management style of Superintendent Hill and her leadership team were reported to members of the Legislature. After the issuance of the MacPherson Report, and through this Committee's investigation, many more allegations and instances of a management style best described as odd, erratic and troubling came to light. One of those allegations included demands on WDE employees for personal and political loyalty to Superintendent Hill. While an elected official can direct programs and policies, the elected official, as a condition of employment, cannot demand absolute political loyalty. Insisting upon political patronage or loyalty is a violation of Wyoming Statute, the United States Constitution, the Wyoming Constitution, and is grounds for removal from office. Despite the constitutional and statutory provisions to the contrary, it is clear that Superintendent Hill demanded political loyalty from the civil servants who worked for the Wyoming Department of Education.

#### a) **Firing of a WDE Employee for Alleged Comments about Superintendent Hill**

The Committee received testimony concerning the ordered firing of a probationary employee by Superintendent Hill because of comments this employee was alleged to have made about the Superintendent to members of the community in Wheatland. The testimony received by the Committee indicated that Superintendent Hill was upset about two comments made by the probationary employee, both centered on the use of the state plane. Superintendent Hill, and at least one member of her leadership team, intimidated the probationary employee's direct supervisor into writing and signing a letter providing work-related rationales for the discharge of the probationary employee unrelated to the state plane comments.

**FINDINGS – Firing of WDE Employee for Comments about Superintendent Hill:** The Committee finds that the incident where a probationary employee was fired constituted an attempt by Superintendent Hill to ensure political and personal loyalty in the WDE staff. This sort of petty and vindictive behavior not only sowed seeds of distrust towards leadership among dissenting WDE employees, but also hampered the ability of WDE to perform its assigned duties. The Committee also finds evidence of an improperly motivated firing for which Superintendent Hill and members of her leadership team felt the need to concoct a “cover story.”

b) Filming Body Language of Employees

The Committee received testimony and other evidence showing that Superintendent Hill and her leadership team engaged in the practice of filming WDE employees as they participated in public meetings. Those recordings were then reviewed by WDE leadership to determine whether the body language of the employees displayed support for or opposition to Superintendent Hill and her policies. A member of Superintendent Hill's leadership team, Kevin Lewis, had what was referred to as a "360 degree camera" which he used to film WDE employees on at least two occasions. Though apparently having no formal training in the field of kinesiology, Mr. Lewis and Superintendent Hill on multiple occasions questioned the loyalty of WDE employees based on an employee's body language.

**FINDINGS – Filming of WDE Employees:** The Committee finds that filming and reviewing body language of employees to determine whether they were sufficiently "on-board" with Superintendent Hill's policies was intended to intimidate WDE employees and constitutes an unacceptable treatment of the public employees of Wyoming. Whether or not Superintendent Hill requested these evaluations is not material. They occurred under her watch and there is no indication she disapproved of the process.

c) Forced Retirement of WDE Employee who Superintendent Hill Perceived as Critical of Her

Early in the Hill administration, a WDE employee with considerable experience in education, was so marginalized by Superintendent Hill and her leadership team that the only conceivable option left open to him was retirement. This occurred because the employee was overheard by Jerry Zellars, a member of the Hill leadership team, holding a conversation with another WDE employee questioning whether Superintendent Hill was going to be "an innovator."

Due to this one question, the employee and his direct supervisor were brought into a meeting with Superintendent Hill and Zellars. The Committee received testimony that the meeting lasted approximately 70 minutes. Superintendent Hill reported to the employee that she knew Zellars was "loyal" to her and that she did not trust the employee. When the employee tried to explain the offending comment, Hill told him she did not want to "wordsmith" with the employee.

The employee was demeaned and deflated by Superintendent Hill's conduct. As a result, the employee was put in a position where his continuing employment at WDE would be extremely uncomfortable for him. He was left with no other constructive option but to resign. The employee announced his retirement from WDE the day after the meeting.

**FINDINGS – Forced Retirement of WDE Employee:** With the resignation of this employee, the WDE lost a vast amount of institutional knowledge, the State lost a valued public servant,

and the remaining WDE employees learned they had better not question Superintendent Hill. Superintendent Hill had effectively silenced dissent within the WDE and assured personal loyalty to her within the Department.

d) Meeting on January 22, 2012

The Committee received a report concerning a meeting at the WDE on Sunday, January 22, 2012. Superintendent Hill called the meeting following a contentious hearing before JAC earlier in the month, primarily related to the T2T program. At the outset of the meeting, Superintendent Hill asked who was “with her” and who was “against her.” She stated that anyone who was against her could leave. Superintendent Hill and John Masters were seated at a table in the middle of a large U-shape of other tables. Jerry Zellars commented to the effect that he was not comfortable with the direction of the meeting. Hill became very angry and there was a tense back-and-forth between her and Zellars. Superintendent Hill came out of her chair and got close to Zellars' face as they argued. The dispute culminated with Superintendent Hill telling Zellars that she would have the last word on the matter, and he was not to say anything else. Zellars kept quiet.

**FINDINGS – Meeting on January 22, 2012:** The meeting on January 22, 2012, provides yet another example of Superintendent Hill mistreating her employees and improperly making demands for personal loyalty.

e) Superintendent's Demand for Loyalty and Belief in Conspiracy Theories

During testimony the Committee received in January 2014, and from reports the Committee received, it became apparent that Superintendent Hill exhibits a strong belief that there are multiple plots being carried out against her or some sort of plan to thwart her educational agenda. It appears that the groups Superintendent Hill believes are plotting against her include former WDE employees, the Governor and legislators.

**FINDINGS – Superintendent's Demand for Loyalty and Belief in Conspiracy Theories:** At the beginning of Superintendent Hill's administration, WDE employees exhibited the same hesitations and fears brought on by any change in leadership. Time and again, WDE employees stated to the Committee that they wanted to support the initiatives of the WDE leadership, but they wanted to ensure that they did so in accordance with federal and state requirements. The Committee finds that Superintendent Hill's judgment of her employees and other state officials was clouded by her misperception that plots were being hatched against her. This misperception greatly impaired her ability to effectively manage the Department and also to interact with other members of the executive and the legislative branches.

f) November 19, 2012 Meeting and January 23, 2013 Follow-Up Interviews:

On November 19, 2012, Superintendent Hill called new employees into a hastily assembled meeting to discuss the report of the liaisons hired by the Legislature relating to



implementation of WAEA. Employees stated that Hill told the group at the meeting that external accountability was not going to work and that she would not be bullied by the Legislature. The meeting also included demands by Superintendent Hill to demonstrate political loyalty. Employees were asked to stand, step forward and hold hands if they wanted to join the circle of trust, if they were willing to support Superintendent Hill and her work, if they trusted Superintendent Hill and could be trusted and if they trusted Hill's leadership team. After the meeting, employees described the event as very strange and uncomfortable. Employees were intimidated and felt they had no choice but to agree with the Superintendent.

Employee Beth VanDeWege was sufficiently disturbed by Superintendent Hill's conduct at the November 19, 2012 meeting that she wrote a letter to members of the Legislature critical of the meeting. By January 22, 2013, the letter had found its way to Superintendent Hill. The letter written by Ms. VanDeWege was circulated through the Legislature in support of Senate File 104 and legislators were considering the appropriateness of the November 19<sup>th</sup> meeting.

On January 23, 2013, Superintendent Hill decided to interview employees who attended the November 19<sup>th</sup> meeting. Angela Benner, the HR Manager for DFS, conducted the interviews at WDE's offices. Ms. Benner was given a list of employees to interview and told what questions to ask. She initially conducted one interview in one office, but then was moved to Superintendent Hill's office to complete the interviews. Surprisingly, Superintendent Hill interrupted several interviews by walking into the room. Also, as Ms. Benner later learned, Superintendent Hill and her management team lined up employees in the hall outside the interview room, making them nervously await their turn while leadership team members walked among them and sat in the rooms right next to the interview space. Ms. Benner confirmed that the November 19, 2012 meeting was uncomfortable for many employees. Employees felt that most of the questions asked at the November meeting were aimed at employee loyalty to the leadership team. More disturbing, however, is Ms. Benner's ultimate conclusion that the real reason she was called to WDE to interview employees was to find information that Superintendent Hill could use to defend herself against Senate File 104.

**FINDINGS – November 19, 2012 Meeting and Follow-Up Interviews:** Superintendent Hill's actions on November 19, 2012 and January 23, 2013, indicate that she was not only willing to demand personal allegiance from her employees, but that she was willing to abuse state resources to accomplish this purpose by pulling in human resource personnel from other agencies. The manner in which Superintendent Hill's November 19<sup>th</sup> meeting was conducted was inappropriate and threatening. Superintendent Hill's insistence that employees stand, step forward and hold hands in support of her initiatives and leadership was misguided, at best, and more likely manipulative. Rather than helping her employees feel secure, her attacks on legislative initiatives and the liaison's report could have only further confused her employees about the mission of the Department. With regard to the January 23<sup>rd</sup> interviews, corralling employees in the hallway while leadership team members swarmed around them and watched them from their offices was inappropriate. Interrupting the interviews could have done nothing but assure that the employees knew that their responses and participation were anything but confidential.

*For the Committee's Complete Report and Findings on the Superintendent's Demands for Political and Personal Loyalty, See Pages 68 to 79.*

**4) Harassment—Discouraging Investigation of WDE Management Member**

Substantial information was presented, through testimony, regarding a member of WDE management who was cited once for multiple violations of the State sexual harassment policy and once for general harassment. Due to the sensitive and personal nature of the allegations, the Committee is not detailing those incidents. Based on the testimony received by the Committee, there is evidence the employee's inappropriate behavior continued and was not investigated in accordance with state policy. The threatening and hostile atmosphere fostered by the Superintendent and testified to by many witnesses, made it difficult for employees to file complaints and seek investigations of inappropriate conduct. The Committee finds that the Superintendent failed in her responsibility, as agency head, to ensure that suspected harassment was investigated or to ensure that her senior management was properly trained and enforcing the State's anti-discrimination policy.

Due to Superintendent Hill's failure to adequately investigate and address the allegations of harassment, the Committee finds that it may possess more evidence and information on these incidents than any other organization. The Committee is compelled to provide this information to the Wyoming Attorney General's Office in a confidential format for further action as that Office deems appropriate.

*For the Committee's Complete Report and Findings on Harassment within the WDE, See Pages 79 and 81.*

**5) Fear and Intimidation in the WDE Workplace**

The Committee received reports and testimony that Superintendent Hill created, promoted and tolerated a workplace at WDE rife with fear and intimidation. Employees reported various incidents where they were fearful in the work place or browbeaten and belittled by Superintendent Hill and her leadership team. The Committee believes that no Wyoming state public employee should ever be subject to a work environment in which they are afraid.

Many of these employees stated to the Committee that they had no outlet in which to address fear and intimidation because Superintendent Hill reclassified the Human Resource ("HR") Manager from a permanent classified position to an at-will, executive level position with no prerequisite qualifications. This created a lack of trust in WDE employees toward the HR Manager who they feared had been hired to be loyal to Superintendent Hill. Employees endured a situation where they had to deal with workplace problems on their own due both to the HR Manager's inexperience and perceived loyalty to Superintendent Hill. This extremely difficult situation explains why there were so few complaints filed by WDE employees during the Hill

administration as compared to the number of WDE employees who have since spoken out about the treatment they received at the Department.

**FINDINGS – Fear and Intimidation in WDE:** It is clear to the Committee that a significant number of employees felt threatened in the workplace, and many felt they had no effective outlet available to them to address that situation. The behavior these WDE employees experienced is intolerable in any work environment. A crucial management responsibility of the Superintendent of Public Instruction is providing a safe, respectful work environment. Superintendent Hill failed in this management responsibility. She actively created and passively allowed a climate of fear and intimidation to permeate the Department during her administration. Her obliviousness to the toxic work environment at WDE only serves to heighten her failure.

*For the Committee's Complete Report and Findings on Fear and Intimidation within the WDE, See Pages 81 to 85.*

**E. SUPERINTENDENT HILL'S TESTIMONY BEFORE THE SELECT INVESTIGATIVE COMMITTEE ON JANUARY 8, 2014.**

The Special Investigative Committee ensured that Superintendent Hill had the opportunity to tell her side of the story through her testimony to the Committee. Rather than avail herself of the opportunity to clearly address the concerns of the Committee and the allegations against her, Superintendent Hill's testimony was hostile, vague and misleading.

Provided with an opportunity to fully and openly answer questions posed to her by Special Counsel and members of the Committee, Superintendent Hill was instead largely combative, nonresponsive or stated that she couldn't remember important details of key events while she served as the agency director. Additionally, many of Superintendent Hill's responses to questions were intentionally misleading or designed to stonewall the Committee. The Committee finds Superintendent Hill's testimony particularly disturbing considering her repeated statements that she welcomed the opportunity for a public vetting of the allegations against her.

The Committee finds that numerous facts documented in written correspondence created at the time WYR was implemented at Fremont District #38 were specifically contradicted by Superintendent Hill in her sworn testimony before the Select Committee. These facts relate to whether Superintendent Hill was actively pursuing ARRA funds to finance the implementation of WYR.

In spite of the notice and the time to prepare to testify, Superintendent Hill did not know the answers to many of the obvious and important questions which were the subject of the Committee's inquiry. In many instances, Superintendent Hill testified that she did not know or remember important facts. While some of Superintendent Hill's failure to recall events can certainly be attributed to the passage of time, the Committee questions her lack of ability to remember key details to events which were contentious at the time they occurred and have remained contentious to this day.

Superintendent Hill, when faced with facts or allegations she could not rebut, resorted to personal attacks on the witnesses and Committee members. Nearly every witness who testified before the Committee was subject to personal attacks by Superintendent Hill. The attacks were not calculated to bring any additional evidence forward, but were calculated to harass, embarrass and punish anyone who had the temerity to testify against Superintendent Hill.

***For the Committee's Complete Report and Findings on Superintendent Hill's Testimony Before the Committee, See Pages 85 to 96.***

***For the Committee's Conclusions and Recommendations, see Section IV, Pages 97 to 101.***

***For the Committee's Final Comments, see Section V, Page 102.***

## II. INTRODUCTION

In fall 2012, employees at the Wyoming Department of Education (“WDE” or “Department of Education”), the education liaisons appointed by the Legislature, members of the Joint Education Committee, the Select Committee on Education Accountability and the Joint Appropriations Committee began complaining of irregular and possibly illegal conduct at the Department of Education under Superintendent Cindy Hill’s leadership. Legislators heard complaints of willful disregard of the law and misspending of appropriated funds. Certain legislators proposed bringing articles of impeachment at that time.

Legislative leadership discouraged this course of action. Impeachment is a remedy to be used sparingly, and only after a thorough investigation and clear proof of impeachable conduct. In the 2013 session, the Legislature passed Senate File 104. Also in the 2013 session, the Legislature passed two Budget Bill amendments authorizing audits of the Wyoming Department of Education. [2013 Session Laws, Ch. 73, Sec. 2, Sec.21, fn.1 and Sec. 340.] In addition, following the 2013 Session, the Governor appointed Rawlins attorney Catherine MacPherson to head an independent Inquiry Team to investigate allegations of wrongdoing ordered or authorized by Superintendent Hill at WDE.

Subsequent to the release of the Governor’s Inquiry Team Report (the “MacPherson Report”), it was clear that the people of the State of Wyoming needed conclusions and closure regarding these allegations. The issues were best articulated by Representative Sue Wilson (a legislator who voted against SF 104), in an e-mail to the entire membership of the House of Representatives. In that e-mail, Representative Wilson argued:

A robust discussion! Thank you, Mr. Speaker, for your very helpful presentation of the requirements for impeachment. It is possible that impeachment is too blunt of an instrument, but I think it is important for us to follow up. I will summarize my thoughts into four brief points, and then carry on below with some questions for attorneys or those with more experience with the state and the feds, and some comments for those who still haven’t made up their mind.

- If the allegations in the report are false or incorrect:

We can investigate further, clarify the issue, and clear the Superintendent of wrong-doing.

We can decline to follow up, because we’re sick of the whole thing, and leave the Superintendent under a cloud.

- If the allegations are correct:

We can investigate further and take suitable action (impeachment, referral for charges, clarification that the allegations were correct but the issues have been resolved by SF104, etc.).

We can decline to follow up, and essentially tell state employees and the public that misuse of public funds is no big deal . . .<sup>1</sup>

<sup>1</sup> The full text of the e-mail, sent by Rep. Wilson on June 22, 2013 at 4:34 p.m. to all the members of the Wyoming House of Representatives is as follows:

Dear colleagues,

A robust discussion! Thank you, Mr. Speaker, for your very helpful presentation of the requirements for impeachment. It is possible that impeachment is too blunt of an instrument, but I think it is important for us to follow up. I will summarize my thoughts into four brief points, and then carry on below with some questions for attorneys or those with more experience with the state and the feds, and some comments for those who still haven't made up their mind.

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We can investigate further and take suitable action (impeachment, referral for charges, clarification that the allegations were correct but the issues have been resolved by SF104, etc.).

We can decline to follow up, and essentially tell state employees and the public that misuse of public funds is no big deal.

I am sorry to say that some members of the public and the legislature seem to be suggesting a fifth point, which is that all the allegations in the report are false, but that a legislative committee can't be trusted to draw that conclusion. I don't know how to answer that point. It seems to me that we need to follow up on the report.

To expand on the above and to ask questions so that I too can answer constituent questions:

The main issues in the report are a) management/leadership/workplace, b) hiring practices, c) use of federal funds, and d) use of state funds. Regarding the first issue, I think we all can agree that being obnoxious and unlikable is not a cause for impeachment. Regarding the second, the report says (ch. , p. 1) that the State's Recruitment Policy states that "reasonable efforts shall be made to attract suitable . . . applicants". The chart of ten positions (ch. 8, page 3) shows that 8 of 10 positions were only open to agency personnel and the average length the positions were posted was 5 days. The other two were open to the public, and open until filled. We can argue whether five days is reasonable, so as a former supervisor I would consider this a grey area.

It seems to me that the issue of misuse of state and federal funds is the one we should concentrate on. First, let's suppose that the employees' concerns are correct, and the funds were misused. Initially, I was going to ask if the misuse of state funds (i.e., charging expenses to inappropriate accounts) was against any statute, or if it would just be against standard procedure, but after developing my question I read the State Auditor's 2012 Comprehensive Annual Financial Report. It notes that the auditor's requirement to comply with Generally Accepted Accounting Principles (GAAP) is specified in W.S.9-1-403(a)(v), which indicates that certification of itemized accounts is done under penalty of perjury; this led to W.S. 6-5-303(b): it is a felony to submit false vouchers with the intent to defraud. We might discover that there was no intent, and that 8-10 incidents totaling less than \$2 million (I think—it's hard to tell) resulted from sheer incompetence. That would remove the cause of impeachment, but it does strengthen the argument for SF104 that an experienced administrator should be hired to run the department.

If a regular state employee misused, or deliberately miscoded funds eight to ten times over the course of two years, I assume their supervisor would counsel them, train them, mark them down in their evaluation, put them on an improvement plan, and probably, after this many misdoings, fire them. An at-will employee would have been let go after three or four of these occurrences. The Superintendent has no supervisor other than voters (who do not have access to this information on a timely basis) or the legislature.

If we do not follow up on this report, are we saying that it is too much trouble to hold people accountable when they misuse, or fail to supervise people who are misusing, state and federal funds? There are a lot of state employees who live in my district. Should employees of WYDOT, Game & Fish, and the Health Department (giving examples of departments with large, complex budgets) understand that we authorize their supervisors to not bother to monitor and correct misuse of funds?



After the issuance of the MacPherson Report, forty-three of the sixty members of the Wyoming House requested that an investigative committee be empaneled to determine exactly what was happening in the Wyoming Department of Education and to draw conclusions from the investigation. Out of a sense of commitment to the State, and an understanding that there are burdens of serving in public office that are not necessarily the ones elected officials would choose for themselves, the members of the Committee volunteered to investigate the allegations and fulfill their obligation to ensure that the Wyoming State government is operated effectively and within the bounds of the law.

The Committee felt that some instances of alleged misconduct required no further investigation. While the Committee believed further legislative action was not merited on these issues, the choice of the Committee not to proceed should not be taken as exoneration.

Additionally, live testimony was elicited from a limited number of witnesses who were believed to possess the most relevant information. The Committee relied on other statements from the MacPherson Report and documentary evidence during its investigation. Had the Committee called all witnesses who possessed any relevant information, the Committee hearings would have lasted several months. The Committee called only witnesses who could provide information beyond that contained in the MacPherson Report and who had knowledge related to

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I doubt that Superintendent Hill signed off on voucher requests herself, but she is responsible for the actions of her staff. Did she just fail to supervise her team, or did she essentially authorize a heedless approach to or a deliberate misuse of public funds? If we compare this state situation with the current complaints about the federal IRS and attorney general, we must admit that leaving subordinates to take the heat for executive decisions, just because it's too much trouble to follow up, is an ugly option.

On the other hand, if Superintendent Hill's position is correct, and the many WDE employees who think that state and federal funds were misused are simply mistaken (or lying), then there are many public reports alleging wrongdoing that need to be corrected. Are we saying that the legislature can't be bothered to gather a committee to set the record straight and clear her name?

If the legislature decides not to follow up on this report, might the State Auditor want to follow up on the suggestions that WDE falsely certified claims for state funds? (I guess we'd have to ask her.)

My understanding from a 6/20 Star-Tribune article is that the report has been turned over to the feds, and their response is expected next week. In your experience, if federal funds have been misused (but not for personal use), do they usually just ask to be reimbursed, or are there criminal charges that can be filed?

Regarding the confidential report, if we do not subpoena it (thank you, Mr. Speaker, for the information on how to access that), what happens to the information? It isn't clear to me what information might be in there that makes it private. Would it be charges of a criminal nature? (I have read rumors in the newspaper comments of sexual harassment.) In that case, what would be the procedure if we don't follow up? Are the employees just to pursue criminal charges on their own (whatever they might be), could several group together and file a class action against the state if there are charges of a similar nature? In that case, would the Attorney General have to defend the WDE and the state in general? On the other hand, would the AG be able to file criminal charges against a state employee (or elected official) for whatever malfeasances might be in the confidential report? I don't know what the possible actions would be.

Thank you to those of you who take the time to answer these questions.

Best wishes to all,

Sue

the most egregious conduct alleged against Superintendent Hill. Contrary to the Superintendent's recent attacks on the Committee's work, the Committee often sought to validate or mitigate the most serious allegations by hearing live testimony from those who made the allegations. The Committee made no effort to specifically bolster evidence against Superintendent Hill. Other witnesses were ready, willing and able to testify. They were not called out of the necessity for an efficient use of time and money.

All of the witnesses who testified in front of the Committee did so under subpoena – that is they were summoned, involuntarily, to testify. Even in the face of personal attacks, the witnesses were factual and professional. The State of Wyoming owes these people a debt of gratitude in coming forward and testifying honestly and completely.

This Report is the culmination of hundreds of hours of dedicated hard work, digging through millions of pages of documents, thousands of pages of interview transcripts, and hundreds of pages of recorded testimony. The Committee would like to thank special counsel Bruce Salzburg, Rob Jarosh and Khale Lenhart and Committee staff from the Legislative Service Office for their efforts assisting the Committee in its investigation. However, this Report, and its Findings, Recommendations and Conclusions, is the determination of the Committee and the Committee alone. The Committee reached this determination based on the findings of its investigation, which was conducted under the inherent authority of the Wyoming Legislature to investigate issues over which the Legislature has constitutional charge.<sup>2</sup> The Committee's investigation was in no way directed by any member of the executive branch of Wyoming State Government, including any member of Governor Mead's Office.

The Committee released a Draft Report on July 1, 2014. Superintendent Hill was provided 15 days to respond to the Draft Report. Superintendent Hill responded to the Draft Report in a Press Release styled "An Open Letter to the People of Wyoming." Superintendent Hill's letter consisted of three pages, a document titled "Minimum Estimated Costs Associated with Committee Work" and certain correspondence, primarily between Superintendent Hill and the Committee. Superintendent Hill's response without attachments is included with this Report as Exhibit 90. The Committee notes that Superintendent Hill's response to the Draft Report does not contain any documents, affidavits or any other evidence or proof refuting the Draft Report.

Also attached to this report is correspondence in lieu of a Minority Report from Representatives Mark Baker, Kathy Davison and Nathan Winters who voted against the release of the Draft Report. [Exhibits 91 through 93.] The final vote to release this Report was 13-3 [Exhibit 94].

Finally, the Select Committee investigation resulted in a direct cost to the State of Wyoming of \$231,000.00. The Committee believes its duty to ensure a government that is

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<sup>2</sup> See Appendix I to this Report for a discussion of the legal standards of legislative investigations.



operated responsibly, and within the bounds of the law, justifies this expenditure of funds. The State of Wyoming expends \$4 million a day on education. The Committee believes \$231,000.00 is a very reasonable sum to investigate serious allegations against the Superintendent of Public Instruction.

### **III. AREAS OF INVESTIGATION AND FINDINGS**

Each area of investigation discussed in this Report, includes a narrative describing the relevant background information, the allegations of misconduct, analysis of the facts surrounding the alleged misconduct, and a conclusion as to whether the Committee found improper conduct or a violation of the Wyoming Constitution, statutes, rules or regulations.

#### **A. TEACHER TO TEACHER PROGRAM**

##### **1) An Examination of the Constitutional and Legal Requirements to Establish And Fund a Program under Wyoming Law.**

Prior to an examination of the creation of programs by the Wyoming Department of Education, it is important to detail the constitutional and legal requirements that apply to all government agencies and elected officials, including the Governor, Secretary of State, Treasurer, Auditor and Superintendent of Public Instruction. Wyoming's Constitution and statutory law are very clear about the proper method for creating and funding new initiatives within Wyoming government.

Wyoming's Constitution, Art. 3, § 35, clearly places the authority to appropriate money in the hands of the Legislature, and in no other branch of government:

Except for interest on public debt, money shall be paid out of the treasury only on appropriations made by the legislature, and in no case otherwise than upon warrant drawn by the proper officer in pursuance of law.

In other words, the Legislature is constitutionally charged with appropriating all funds in the treasury and no executive official can appropriate money to his or her own initiatives without legislative appropriation. No elected official can access the public monies without an appropriation by the Legislature.

The Legislature delegates a limited process whereby the Governor may accept and expend external (non-general fund) revenue to address issues that may arise while the Legislature is not in session. [See W.S. 9-2-1005(b).] There also exists narrowly defined gubernatorial authority to transfer funds from one agency or program to another. [See, for example, 2012 Budget Bill, Sec. 309, 2012 Session Laws, Ch. 26, Sec. 309.]

Various Wyoming Statutes implement the guiding principle found in Art. 3, §35:

W. S. § 9-4-102(a): Except as otherwise provided by law, no state officer is authorized to create any expense of any kind or character as a charge against the state in excess of the amount appropriated for his use. Any

officer creating an expense in excess of the appropriation is responsible for the expenditure under his official bond.

The Superintendent of Public Instruction is a state officer, and is responsible for ensuring that no expense of any kind or character is created by the WDE unless that amount is appropriated by the Wyoming Legislature.

Federal grants are also subject to legislative appropriation. Aside from the narrow delegation of power to the Governor (not the Superintendent of Public Instruction) as noted above in W.S. 9-2-1005(b), federal grant dollars may not be spent unless they are appropriated by the Legislature in a bill signed by the Governor or allowed to become law without the Governor's signature:

W.S. § 9-4-202: This act reserves to the legislature the authority to establish funds outside of constitutional requirements. Provision is made to facilitate the handling of **federal grants and other revenues which shall remain restricted according to the terms under which they are received. It is the policy of the legislature that all general governmental programs, activities and functions shall be subject to its review regardless of the sources of revenue available to the various departments, institutions or agencies except as otherwise provided.**

Federal grants cannot be diverted for purposes other than those specified in the grant, and regardless of the source of revenue, all government programs are subject to legislative review.

When the State of Wyoming receives revenue for a special revenue fund, expenses of that activity shall be chargeable to that special revenue account, and monthly, those expenses shall be charged to that special revenue account.

W.S. § 9-4-205(b): **Expenses** required in administrative activities chargeable to accounts within the special revenue fund and the highway fund excluding the department of transportation **shall be provided by legislative appropriation from the general fund.** Monthly, as the general fund appropriations are expended, corresponding amounts shall be transferred from the proper accounts within the funds specified in this subsection to the general fund. The administrative expenses chargeable to these accounts shall be included in the governor's budget to the legislature as provided by law.

Funds from special revenue accounts cannot be diverted to other accounts without legislative appropriation and only expenses of the special revenue fund can be spent for the purposes of the special revenue fund.

In order to spend the funds of the State of Wyoming, certain statutory and constitutional requirements must be met. The funds must be appropriated by the Legislature and the expenditure of the funds by the agency must conform to the budget. If those requirements are not met, the funds cannot be spent. W.S. 9-2-1005(a) is very clear about that point:

W.S. § 9-2-1005 (a): No warrant shall be drawn by the auditor or paid by the treasurer:

- (i) **Unless funds have been previously appropriated or otherwise authorized by law for that purpose;**
- (ii) When it has been certified by the department that a state agency is in nonconformance with its approved budget;
- (iii) If the amount sought to be expended would exceed the appropriation or other funds authorized for its use by law;
- (iv) **If the expenditure is in nonconformance with the amounts, programs and approved budget authorized by legislative appropriation acts** except upon approval of the governor as provided by subsection (b) of this section;
- (v) **If the agency for which the expenditure was authorized is in noncompliance with a provision of a legislative appropriation act relating to the expenditure;**
- (vi) If the expenditure relates to a capital improvement project for which total appropriations and authorizations for the project are insufficient except as otherwise authorized by law;
- (vii) If the expenditure is for salaries for employees exceeding the maximum number of employees for the agency authorized by a legislative appropriation act except upon approval of the governor as provided by subsection (b) of this section;
- (viii) **If the expenditure of general fund monies is requested for a program other than the program for which the expenditure was authorized by the legislature;**
- (ix) **If the expenditure of nonfederal monies appropriated for the personal services budget by a legislative appropriation act is requested for any other purpose;**
- (x) If the expenditure was authorized for capital improvements but sought to be expended for any other purpose;
- (xi) If the expenditure is requested from federal revenues exceeding the amount authorized by a legislative appropriation act except upon approval of the governor as provided by subsection (b) of this section.

In the absence of legislative direction to the contrary, *e.g.*, 2012 Session Laws, Chapter 26, Section 309, if funds are spent in violation of W.S. § 9-2-1005(c), the funds are spent in violation of the law and the Constitution.

No expenditure can be made in excess of a budget, and no transfers between budget categories are allowed without legislative appropriation or a transfer approved by the Budget Division of A&I. Any expenditure that is outside of those amounts budgeted or any transfer of funds between budgets is a violation of law.

W.S. § 9-2-1007(a): **No indebtedness shall be incurred or expenditure made by any agency in excess of the amount appropriated or otherwise authorized by law** or where expressly prohibited by law or regulation adopted under this act or prohibited by federal law. Expenditures from the account administered through the surplus property section shall be made only as permitted by federal law. **Transfers in budget categories shall not be permitted by the department where the items of appropriation or other revenues are explicitly limited to a defined purpose by law or regulation adopted under this act. No agency shall revise, modify or otherwise change its approved budget without the prior approval of the department through the budget division.**

Agencies cannot change their budgets internally at the desire of the elected official or agency director. The constitutional process of checks and balances prohibits expenditures by the executive branch, and transfers between accounts, at the directive of an elected official without legislative approval.

If an elected official desires a new program or a change in the budget, the statutes set forth a procedure to request that change through the budget process. The law does not permit an executive branch officer to expend state funds for purposes which are not authorized by the Legislature's appropriation.

Further, the budget process mandates that agencies fully describe any program changes, and how they wish to spend their budget requests:

W.S. § 9-2-1011:

(a) Subject to subsection (c) of this section, the department through the budget division shall prepare standard budget estimates. Entities shall prepare expanded and exception budgets in a form consistent with the standard budgets as directed by the department.

(b) The **information developed in budget documents shall include:**

(i) **Appropriations or other allotted revenues authorized to entities including all types of revenue regardless of source and**

**final fund destination, federal fund identification and expected length of continuance of the federal funding;**

**(ii) Expenditures, obligations, encumbrances and balances of the agencies from whatever source derived;**

(iii) Estimates of revenues and future needs of entities;

**(iv) Program changes, descriptions and activities of the agencies;**

**(v) An explanation of and reasons for anticipated receipts and expenditures of the agencies;**

(vi) An assurance that the budget request has been prepared in accordance with the agency plan prepared according to W.S. 28-1-115 and 28-1-116.

Budgets are designed by the Budget Division of the Department of Administration and Information to specify sufficient detail to track expenditures. The Governor has the authority to alter an agency's budget prior to submittal to the Legislature:

§ 9-2-1012 (c): **The governor may**, upon examining the budget estimates and requests and after consultation with each agency, **approve, disapprove, alter or revise the estimates in accordance with applicable state and federal laws.**

After the Governor prepares the budget for the State of Wyoming, the Legislature modifies the budget through budget hearings and amendments to the budget bill. After the budget bill is passed, the Governor has the opportunity to line-item veto provisions of the bill. The Legislature then has the opportunity to override those line-item vetoes. After this process is complete, the budget bill becomes the law of the State of Wyoming.

**2) The Wyoming Department of Education Created the Teacher to Teacher (T2T) Program Without a Legislative Appropriation, and in Violation of Wyoming's Constitution and Statutes.**

In 2011, WDE created professional development programs, including programs named 3+8 and the Writing Workshop. A Teacher-to-Teacher ("T2T") concept was used in each program. The T2T concept used experienced teachers to train other teachers. These programs represented a new initiative by the recently established Hill Administration to focus significant WDE resources toward literacy professional development. WDE had no legislatively approved funding for these programs or legislative authorization to run the programs. Despite the lack of funding and legislative authorization, these programs were developed and offered to Wyoming teachers at various times starting in October 2011 through December 2012. Funds were diverted from other legislatively authorized programs to run these programs. [Exhibit 5, pp. 314-317; Exhibit 36, p. 2.]

Essentially, the T2T programs were an unconstitutional growth of government, created by Superintendent Hill. As discussed above, in order to implement a new program, regardless of the source of funding, agencies are required by law to obtain legislative authorization as well as an appropriation to carry out the new program. Typically this can take place by simply making an exception request to the Governor in the agency's budget request. Another mechanism is to ask legislators to file a bill to create and fund the new program.

In December 2011, during its budget hearings, the Joint Appropriations Committee ("JAC") learned of the new programs created by Superintendent Hill which used the T2T format. WDE had no appropriation or legislative authority to start these programs. Superintendent Hill had diverted funds from various legislative appropriations to fund the programs in violation of the law and the Constitution. During JAC hearings, WDE explained that the programs had been developed by Sheryl Lain, a member of Superintendent Hill's leadership team, and were intended to help teachers teach literacy and conform to Common Core standards. Without legislative authorization, WDE had no authority and no funding to conduct the new, unauthorized programs. Regardless of their merit, the programs were neither authorized nor funded.

Dissatisfied with unauthorized spending on professional development programs and Superintendent Hill's use of funding for those purposes, the Legislature passed footnote 3 to 2012 House Bill 001, Section 005 ("2012 Budget Bill Footnote", "Budget Footnote" or "Footnote"). The Footnote became effective when it was signed by the Governor on March 8, 2012. As signed, the Footnote required that the monies Superintendent Hill was expending to fund T2T programs be transferred to a new account and thereafter spent only for educational assessment. Subsection (c) of the Footnote stated:

(c) Any unexpended, unencumbered, unobligated amounts within WDE general fund and federal fund programs which have been designated by [WDE] for teacher to teacher programs, including any amounts appropriated for these purposes in this act, shall be transferred to the education testing and assessment account created under this footnote.

Pursuant to other sections of the Footnote, once funds meant for T2T programs were transferred to the Education Testing and Assessment Account ("ETA"), they could be further expended only on activities related to educational assessment. Consequently, with the passage of the 2012 Budget Bill footnote into law, WDE trainings using T2T were prohibited through comprehensive defunding.<sup>3</sup> Additionally, any authority Superintendent Hill believed she had to

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<sup>3</sup> A review of the entire footnote reveals that the Legislature demanded that a large number of the WDE's funding units be placed into the new Education Testing and Assessment Account and be used only for the purpose of testing and assessment. The entire text of the 2012 Budget Bill footnote is as follows:

3. (a) Amounts within units 6104, 6105, 6130, 6132, 6160 and 6373 of the WDE general fund and federal fund programs, as appropriated by 2010 Wyoming Session Laws, Chapter 39, Section 2, Section 005, and amounts within units 6173 and 6174 as appropriated in 2011 Wyoming Session Laws, Chapter 184, Section 5(d), and as appropriated for the fiscal biennium commencing July 1, 2012 and ending June 30, 2014, shall only be expended for education testing and assessment



transfer funds between categories or to use other accounts to fund T2T programs was negated. Transferring funds between purposes was only to be done after approval by the Governor.<sup>4</sup> The 2012 Budget Bill also restricted the use of funds appropriated in prior budgets under which the WDE was currently operating. The legislative directive was clear: the T2T program had not been authorized and no funds under the prior budget, nor the ensuing budget, were to be used to fund unauthorized new programs. This effort was redundant to budget statutes, but was added as

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purposes. Unless approved for transfer under W.S. 9-2-1005(b)(ii), no funds appropriated within units 6104, 6105, 6130, 6132, 6160 and 6373 of the WDE general fund and federal fund programs, as appropriated by 2010 Wyoming Session Laws, Chapter 39, Section 2, Section 005, and units 6173 and 6174 as appropriated in 2011 Wyoming Session Laws, Chapter 184, Section 5(d), shall be expended for any purpose other than for education testing and assessment as required by law.

(b) Any unencumbered, unexpended, unobligated funds within units 6104, 6105, 6130, 6132, 6160 and 6373 of the WDE general fund and federal fund programs appropriated by 2010 Wyoming Session Laws, Chapter 39, Section 2, Section 005, and within units 6173 and 6174 as appropriated in 2011 Wyoming Session Laws, Chapter 184, Section 5(d), which are not expended on testing and assessments as identified in the agency's budget request for these units or as specified by law, together with any reversions of encumbered amounts from the 2011-2012 fiscal biennium, are reappropriated to the education testing and assessment account which is hereby created by this footnote within the state auditor's office. In addition, amounts appropriated within units 6104, 6105, 6130, 6160 and 6373 of the WDE general fund and federal fund programs appropriated for the fiscal biennium commencing July 1, 2012 and ending June 30, 2014, are as of the effective date of this footnote, reappropriated to this education testing and assessment account.

(c) Any unexpended, unencumbered, unobligated amounts within WDE general fund and federal fund programs which have been designated by the agency for teacher to teacher programs, including any amounts appropriated for these purposes in this act, shall be transferred to the education testing and assessment account created under this footnote.

(d) The department of audit shall audit the expenditure of amounts appropriated by 2010 Wyoming Session Laws, Chapter 39, Section 2, Section 005 within the WDE general fund and federal fund programs, together with amounts appropriated by 2011 Wyoming Session Laws, Chapter 184, Section 5(d), and shall ensure such amounts were expended for assessment and testing. In addition, the audit shall identify unexpended amounts and shall ensure the accuracy of amounts transferred to the education testing and assessment account under this footnote.

(e) Amounts expended from the education testing and assessment account created by this footnote shall be certified by the governor and shall be restricted to the costs of administration of testing and assessments imposed by 2012 Senate File 0057, as enacted into law, by 2011 Wyoming Session Laws, Chapter 184, and as otherwise required by law. Expenditures from this account shall require certification by the governor that amounts are necessary to fund testing and assessment required by law.

(f) The agency and the state auditor's office shall, to the extent authorized by law, direct any federal testing and assessment funds to be spent prior to the expenditure of any state funds for this purpose.

(g) This footnote is effective immediately.

<sup>4</sup> This restriction is contained within subsection (a) of the footnote cited above. [2012 Wyoming Session Law, Chapter 26, Section 005, fn 3.]



a precautionary effort in order to send an unambiguous message to the WDE not to fund new programs with funds appropriated for other purposes.<sup>5</sup>

### **FINDINGS – Creation of T2T**

The Committee finds that Superintendent Hill created and funded T2T programs without lawful authorization.

#### **3) Continuation of T2T Professional Development Trainings after the Passage of the 2012 Budget Bill Footnote:**

Following the 2012 legislative session, WDE staff, with the knowledge and apparent consent of Superintendent Hill, changed the name of the T2T program to the Special Education Literacy Program (“SpLiT”). Superintendent Hill then directed that the program to continue. WDE operated the program over the next year. During the following JAC hearings it was learned that the new SpLiT program was started following the passage of the 2012 Budget Bill, despite the budgetary footnotes specifying that such programs were to be discontinued.

Despite the defunding of T2T programs, WDE sponsored a number of new SpLiT professional development training sessions which used T2T in 2012. These trainings took place at various times starting in October 2011 through December 2012. [Exhibit 66; Exhibit 70.] Indeed, WDE’s finance department continued to process payments for T2T-related expenses after the budget footnote’s effective date. [Exhibit 3, p. 562.] The new SpLiT trainings focused on 3+8 and Writing Workshop curriculum and Common Core Reading, just as prior T2T/SpLiT trainings had done. [Exhibit 70; Exhibit 5, p. 316; Exhibit 8, p. 368; Exhibit 51, p. 1; Exhibit 26, pp. 1-2; Exhibit 46, p. 2; Exhibit 27, p. 1; Exhibit 48, p. 1-2; Exhibit 39, p. 1.] Notebooks were distributed to training attendees that contained materials similar or identical to materials previously distributed in prior T2T programs. [Exhibit 8, p. 369; Exhibit 42, p. 1-2; Exhibit 34, p. 4; Exhibit 27, p. 1; Exhibit 35.] The only change to these new SpLiT trainings appears to have been the addition of a limited amount of special education materials (10 to 17 pages of a 300 plus page notebook) and the extension of the trainings’ themes into newly adopted Common Core standards. [Exhibit 34, p. 1.] This evidence shows that WDE disregarded the Legislature’s 2012 budget footnote and continued to offer prohibited professional development trainings, now masked as special education professional development.

Superintendent Hill and her leadership team have attempted to justify the continuation of T2T programs after passage of the Budget Bill Footnote by claiming that T2T was a “delivery method” and not a “program” that could be discontinued. They also argued that the 2012 Budget Bill Footnote language was unclear and that nothing in the footnote prohibited them from continuing their T2T-based programs with funds not withdrawn by the footnote. The Committee

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<sup>5</sup> As an aside, the 2012 legislature required WDE to restore all funding to testing and assessment expenditure accounts. An examination of warrants showed that those education assessment funds had been used to carry out, in part, the T2T programs. An audit of the education assessment accounts was directed. [2012 House Bill 001, Section 005, fn 3(d).]

is not persuaded by these arguments. A review of the WDE's historic use of the term "teacher to teacher" and the circumstances preceding passage of the Budget Bill Footnote indicate that WDE had ample notice of the Legislature's intent.

During the JAC hearings in December 2012, it was learned that the course materials for both T2T programs and SpLiT were nearly identical. WDE had simply renamed the program. The program was continued without legislative authorization, and in defiance of the 2012 budgetary restrictions to stop the program.<sup>6</sup>

After the discovery that WDE was continuing T2T programs as SpLiT, JAC questioned the WDE about its expenditures on T2T related programs. Following a budget hearing on December 14, 2012, on December 17, 2012, the JAC confirmed its request for detailed information concerning any "T2T initiative associated with the SpLiT program or other WDE program." [Exhibit 67.] While noting that T2T is a delivery method, WDE interpreted this request as seeking information about all professional development programs which use "teachers teaching teachers." In an e-mail to JAC legislative staff, WDE's lawyer, John Masters, opined, "I think this is what you are seeking but want to make sure we are responsive [to your information requests]." [Exhibit 68.] Legislative staff responded by confirming that JAC's request "reflects an interest in funding ... used for any teacher-to-teacher 'program,' 'initiative,' etc. (nomenclature aside) whether it was expended within the context of SpLiT or another WDE area, e.g. literacy." [Exhibit 68.] Consistent with JAC's information request, the breadth of which had been clarified in this exchange of e-mails, WDE's formal response to JAC provided a listing of all WDE programs that were using the T2T delivery method.<sup>7</sup> WDE interpreted JAC's request as seeking information for all "WDE SpLiT and T2T initiative workshops." [Exhibit 70.] Clearly, the language used in the information request was adequate to convey the Legislature's focus on WDE's T2T-related programs. Equally clearly, WDE was able to identify all such programs for the Legislature. Given these circumstances, it seems disingenuous for Superintendent Hill and her leadership team to now claim that the budget footnote's use of the

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<sup>6</sup> No funds can be spent without an authorization followed by an appropriation of funds. The Legislature does not budget through a block grant. Rather, funds are appropriated to specific units based upon approved budget requests. Within those units funds are coded to limit their use to the approved purposes. In these instances the Superintendent did not request to spend funds on either T2T or SpLiT. Without a request, there can be no approval. Further, the funds spent by the Superintendent on these programs did not come from units designed to operate workshops and staff development. For example, the 1801 Budget Unit in the WDE budget is for workshops and staff development. No request was made to augment those funds for a new program. And, the funds in that unit are largely directed by the Legislature to be spent through the 600 Series. The 600 series funding is for grants to local districts. The Legislature thereby limited those funds to be passed through to local school districts to control how they are spent. Very little funding is directed through the 900 Series under unit 1801; only 900 series funding is available for the Superintendent to spend on outside contractors employed by WDE. The Superintendent in fact diverted funds from other units to which funds were appropriated for other purposes. The programs to which the Legislature appropriated funding to were deprived of those resources misdirected to the T2T and SpLiT programs. Making matters worse, the 2012 budget expressly directed that this practice stop. The Superintendent nonetheless continued the unauthorized practice albeit with a different name, SpLiT. No executive agency has inherent powers to alter the purposes of legislative appropriations. An executive officer advocating for a change in use of appropriated funds must appeal to the Legislature for such change.

<sup>7</sup> But see Subsection 4, below, addressing the completeness of WDE's responses.

language “teacher to teacher program” was confusing and ambiguous and incapable of execution because T2T is a delivery method. The language used by JAC and understood by WDE, and the language used in the Budget Footnote, were substantially similar. The Committee is not persuaded that the WDE did not understand that the Budget Footnote language applied to the same programs as were identified in WDE’s response to JAC’s information request.

The Department of Education’s historic use of the term “teacher to teacher” also evidences the clarity of the Legislature’s use of the term “teacher to teacher programs” in the Footnote. Although T2T may be a delivery method, as far back as May of 2011, the Department was using the term as a title for its professional development trainings. On May 11, 2011, Superintendent Hill announced a legal settlement<sup>8</sup>, the funds from which would be used “to produce and deliver a statewide training initiative called Teacher-to-Teacher (“T2T”).” [Exhibit 80.] Further, at the time the budget footnote was passed, the Department had been using the term “T2T” and “teacher to teacher” to label its professional development reading skills workshops, sometimes without any other descriptor. Advertisements for the December, January and February, 2011-2012 WDE professional development trainings did not identify the workshops by any name other than Teacher to Teacher. Fliers generically advertised writing and reading training workshops and stated in large, bold font: “Brought to you by Teacher to Teacher.” [Exhibit 65.] Reading Success Institutes were advertised to provide 3+8 instruction and the advertisements were stamped “T2T Teacher-to-Teacher.” [Exhibit 65.] Prior to passage of the Budget Footnote, T2T was not simply a delivery method, but rather the way WDE was identifying a part of its professional development programs. Consequently, it was not unclear for the Legislature to refer to “teacher to teacher programs” when passing legislation intended to discontinue those same programs.

Superintendent Hill’s misguided interpretation of the Budget Footnote is consistent with her prior conduct as Superintendent. This Report details several circumstances in which Superintendent Hill reinterpreted legislative direction. So, too, does a report from two legislative liaisons who were hired to review the Superintendent’s compliance with accountability standards in 2012. The liaisons provided a relevant description of Hill’s general approach to the Legislature:

WDE’s response to and compliance with statutory direction was frequently not forthcoming without pressure from external influence serving as a catalyst for action. Exhaustive contemplation and overreaching scrutiny and interpretation of statutory and regulatory language resulted in unnecessary confusion and often served as an impediment to implementation of duties. [Exhibit 74, p. 3.]

The liaisons’ observations seem equally applicable here and point to the type of confusion created by the Superintendent’s tendency to misconstrue the law. Like the confusion created around implementation of accountability standards, Superintendent Hill’s strained interpretation of the 2012 budget footnote caused confusion within WDE and conflicted with the

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<sup>8</sup> Under W.S. 9-4-205(b), the expenditure of this settlement (for faulty student testing and assessment) likely could not be legally expended on the T2T training program.

understanding of many of Superintendent Hill's professional staff. This Committee and the MacPherson Team discovered a number of professionals within WDE who believed that WDE continued to organize and fund T2T professional development programs despite the budget footnote, which they understood to prohibit such action. [Exhibit 33, p. 1; Exhibit 48, p. 1; Exhibit 48, p. 2; Exhibit 64; Exhibit 70.]

### **FINDINGS – Continuation of T2T**

Despite legislative action to defund and stop T2T professional trainings, the Committee finds that Superintendent Hill and her leadership team violated Wyoming's Constitution and statutes by continuing to fund and offer the trainings. Further, the Committee finds that Superintendent Hill and her leadership team took affirmative steps to deceive the Legislature by renaming the programs "SpLiT." Plainly stated, there is no dispute that T2T professional development trainings were offered by the Wyoming Department of Education after passage of the 2012 Budget Bill footnote. This Committee finds that the Budget Bill footnote unambiguously prohibited the continuation of such programs. These professional development workshops were accomplished using the teacher to teacher methodology and were "teacher to teacher programs." As such, they were prohibited by the 2012 budget footnote and the Department's insistence on running the programs was a direct contravention of the Legislature's direction and a violation of Wyoming Law.

#### **4) Attempts to Hide T2T-Related Expenditures:**

The Committee finds that the Department, at the direction of Superintendent Hill, attempted to hide its continued operation of T2T programs after the passage of the 2012 Budget Bill Footnote.

After passage of the 2012 Budget Bill Footnote, WDE appears to have removed advertising which linked T2T and professional development programs. As detailed in the previous subsection of this Report, WDE also changed the name of the T2T programs to the SpLiT program. The Committee concludes that, under Superintendent Hill's leadership, WDE concealed its use of T2T by changing the name of its various professional development programs that used T2T. The Committee notes testimony and evidence from WDE employees who worked with SpLiT professional development trainings and who believe that those trainings were simply a renaming of prior T2T professional development trainings. [Exhibit 5, p. 316; Exhibit 8, p. 368; Exhibit 51, p. 1; Exhibit 26, pp. 1-2; Exhibit 46, p. 2; Exhibit 39, p. 1.]

The evidence also suggests that leadership at WDE attempted to mislead the Legislature by ordering the scrubbing of certain financial reports to remove all references to T2T. During its budget hearings in December of 2012, JAC formally requested from WDE a detailed summary of all payments made on professional service contracts related to T2T programs. These payments are known as Series 900 payments. This Committee received sworn testimony from WDE finance personnel who prepared the WDE's response to this information request. WDE finance personnel testified that they initially provided WDE leadership with a responsive

financial report generated directly from source documents within the Wyoming Online Financial System (“WOLFS”) database. This report contained work descriptions taken directly from payment vouchers entered into WOLFS by WDE personnel specifically trained to enter data into the WOLFS system. [Exhibit 3, p. 586.] The report showed a number of instances in which WDE made payments to contractors for services related to T2T, including services rendered for T2T, SpLiT and 3+8 training programs.

Sworn testimony indicates that, after submitting the initial report for review within WDE, WDE finance personnel were called to a meeting with Superintendent Hill and members of her leadership team. At that meeting, and despite warnings from finance personnel, WDE leadership directed that the initial report be scrubbed to remove all references to T2T, SpLiT, 3+8 and Wyoming Reads. [Exhibit 3, pp. 542-543; Exhibit 7, p. 607.] Trent Carroll, WDE Accounting Supervisor, testified that he was uncomfortable scrubbing the financial report because this was the first time he had ever been asked to alter a report so as to not accurately mirror the information contained in WOLFS. [Exhibit 3, pp. 543-545.] Greg Hansen, WDE Finance Section Supervisor, testified that he informed Superintendent Hill and members of her leadership team that he was concerned about issuing a report that would not match the information contained in WOLFS. [Exhibit 7, pp. 618-619.] Superintendent Hill and her leadership team ignored the concerns of Hansen and Carroll and insisted that the report be altered to remove the references. Pursuant to that demand, the report was scrubbed, other descriptions were inserted into the report, and Mr. Carroll printed copies of the scrubbed report to provide to Superintendent Hill and her attorney. [Exhibit 3, p. 544.] The scrubbed report was eventually submitted to the Legislature.

This Committee has compared the financial report that was originally prepared by WDE finance personnel and the subsequent, scrubbed, report that was eventually provided to the Legislature.<sup>9</sup> Based on this comparison and the sworn testimony, it is apparent to the Committee that the final financial report submitted to the Legislature was scrubbed of all references to T2T and T2T-related programs and was made not to match the source documents contained in the State’s WOLFS database. Review of the scrubbed report provides evidence of further attempts to conceal the T2T program. Descriptions added during the scrubbing process in a separate column were inconsistent and misleading given the Legislature’s stated interest in determining whether the WDE continued to provide unfunded and unauthorized teacher to teacher trainings. For example, descriptions such as “Mentoring Growth Program & Summer Camp,” “District Coaching,” “Delivery Instructionally Supportive Professional Development,” “Instructionally Supportive Professional Development for Writing” and “Reading Initiative” were inserted to replace T2T references for services provided under T2T contracts. Given the fact that these summaries were being produced at a time when the Legislature was critical of WDE’s spending on T2T-related programs, the Committee finds it highly suspect that the WDE would have chosen to remove references to T2T for any other reason than to deceive the Legislature.

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<sup>9</sup> Although not likely approved for distribution by Superintendent Hill, WDE provided a preliminary report to the Legislative Service Office for comment prior to submitting its formal, scrubbed financial report. This preliminary report has been compared to the final report to determine what information was scrubbed and altered.



When questioned about the scrubbing of financial report at this Committee's hearings, Superintendent Hill attempted to justify her actions by vaguely asserting that the scrubbing was necessary to correct inaccuracies in the WOLFS database, from which the original fiscal reports were compiled. According to Superintendent Hill, WOLFS entries made by WDE staff were unreliable as a result of sloppy data-entry by secretaries. She claims that scrubbing the reports of all references to T2T programs was "all about accuracy and clarity." [Exhibit 9, p. 106.] The Committee notes that the Superintendent failed to provide any evidence of such inaccuracies and that her claims are contrary to the testimony of WDE financial division employees. Greg Hansen testified to the Committee that WOLFS data-entry was not sloppy and that data entered into WOLFS is pre and post audited and reviewed three times. [Exhibit 7, pp. 618-619.] Mr. Hansen and Mr. Carroll both described the training and supervision that is required before any employee is allowed to enter information into WOLFS. Only specially trained personnel can enter information into the WOLFS database. [Exhibit 7, pp. 618-619.] Mr. Hansen directly testified to his belief that information in the WOLFS database is accurate. Although he was not asked to guess at the exact reasons why WDE leadership required him to scrub financial reports, he testified that the scrubbing was not meant to clarify mistakes or inaccuracies. [Exhibit 7, p. 619.]

Consistent with Mr. Hansen's opinion, rather than making the report more accurate and clear, after receiving the scrubbed report, legislative staff felt the report was not sufficiently clear. In noting the lack of specificity in the report, legislative staff described the report as "not very informative." [Exhibit 81.] Further, whether providing additional detail or not, a review of the scrubbed and unscrubbed reports indicates that, rather than scrubbing indications of T2T in favor of adding more descriptive T2T information, the summaries were scrubbed and supplemented with language that failed to disclose any involvement with T2T. As one example, the Committee notes a work description for a contractor named Amy Enzi. In the financial report initially prepared by WDE personnel, the description of Ms. Enzi's work indicated that she had provided services for "T2T." [Exhibit 17, p. 5.] The scrubbed report summarily indicated that she performed "contract services" for "Mentoring Literacy Growth Program & Summer Camp." [Exhibit 17, p. 6.] Whether or not the description provides more accurate information, its omission of any reference to T2T is suspect and provides evidence that leadership at WDE was attempting to mislead the Legislature on its T2T spending.

Given the lack of evidence to support Superintendent Hill's position and the evidence which contradicts her position, the Committee rejects the argument that WDE's scrubbing of information constituted some justified effort to provide more accurate information to the Legislature. The Committee finds that Superintendent Hill consciously attempted to hide the T2T program from the Legislature and the public.

Superintendent Hill also defends the scrubbing of the financial report by claiming that the Legislature had notice that the report was altered. During this Committee's hearings, Superintendent Hill produced an e-mail written by WDE's legal counsel in which counsel gave notice to legislative staff that WDE was going to respond to a specific legislative information request (Request #5, seeking financial information concerning Series 100 expenditures) by altering that report to identify relevant, specific types of T2T-related professional development.

Confusingly, the scrubbed report being reviewed by this Committee does not deal with Request #5 or Series 100 expenditures. Instead, it deals with a separate information request, Request #1, seeking financial information concerning Series 900 expenditures. Superintendent Hill argues that the e-mail concerning Request #5/Series 100 expenditures constituted notice that WDE was intending to remove T2T identifiers from all its information responses. Because the e-mail that was sent to the legislative staff involved a different series of expenditures and a different information request, the Committee does not find that it provides evidence of good faith or full notice. [Exhibit 68.] The Committee finds this explanation to be a veiled attempt to further cover up the fiscal activities of the WDE under Superintendent Hill's leadership.

### **FINDINGS – Attempts to Hide T2T Expenditures.**

This Committee finds significant evidence indicating that Superintendent Hill and her leadership team attempted to mislead the Legislature concerning WDE's T2T-related expenditures.

As described earlier in this section of this Report, starting in December of 2011, Superintendent Hill garnered the attention of the Joint Appropriations Committee because of her unauthorized spending on professional development programs and the diversion of previously appropriated funds to unauthorized professional development initiatives. Superintendent Hill and her administration had engaged in conduct which violated the required budgetary processes and policies outlined above. The result was the Legislature's passage of the Budget Bill footnote which defunded all T2T programs and placed the funds into an account no longer controlled by the Superintendent. Unfortunately, this Committee finds Superintendent Hill's improper conduct did not stop upon passage of the Budget Bill footnote.

#### **5) Misuse of Federal Special Education Funds for T2T Trainings**

Evidence suggests that, in order to fund T2T-related professional development programs after the Legislature had defunded the programs, Superintendent Hill's administration turned to the improper use of federal grant funds designated for special education.

As noted above, after the Budget Bill Footnote was passed, Superintendent Hill's administration continued to operate T2T professional development trainings. Although similar or identical to previously-offered professional development trainings, these trainings were now referred to as SpLiT ("Special Education Literacy") workshops and were comprised of three main reading/writing components: 3+8, Writers Workshop and some Common Core. [Exhibit 5, p. 1.] The evidence shows that SpLiT workshops were paid for, in part, with Wyoming's State Personnel Development Grant ("SPDG"), a federal grant awarded to Wyoming prior to Superintendent Hill taking office. The expenditure of Wyoming's SPDG grant monies was restricted to professional development related to special education. [Exhibit 57, p. 1.] Pursuant to guidance from the federal Office of Special Education Programming ("OSEP"), SPDG funds could be used to fund professional development programs where special education-focused materials were presented to general education teachers who dealt with special education students.

The funds could not be used to teach general education subjects or balanced literacy programs, not geared toward the needs of special education students, even if the instruction was directed at special education teachers. [Exhibit 5, pp. 317-318, 320; Exhibit 8, p. 366.] In other words, SPDG funds could not be used to conduct professional development which focused on general education.

The evidence strongly suggests that, while being funded with special education SPDG funds, WDE's SpLiT trainings were almost identical to the T2T, 3+8, Writers Workshop and Common Core trainings previously offered in Wyoming and which focused on general education/balanced literacy concepts.<sup>10</sup> The evidence and the testimony demonstrate that SpLiT trainings were not focused on special education. [Exhibit 5, p. 316; Exhibit 8, p. 371.] In fact, the evidence indicates that the general education/balanced literacy approach taught in SpLiT trainings was counter to the concepts appropriately taught in special education. [Exhibit 5, pp. 320-321; Exhibit 34, p. 1-2; Exhibit 51, p. 1; Exhibit 31, p. 1; Exhibit 47, pp. 1-3.] Special education teachers who attended SpLiT trainings were often very disappointed with the lack of special education focus and some left training sessions early. [Exhibit 26, p. 1.]

The testimony surrounding this issue is particularly concerning. To begin, it is clear that Superintendent Hill ignored the advice and warnings of program administrators and WDE staff in favor of blindly continuing T2T programs through the use of restricted federal special education grant monies. Tiffany Dobler, WDE's Special Programs Division Administrator, provided testimony that she and her staff were very concerned about the use of the SPDG to fund SpLiT trainings. She did not feel that SpLiT trainings were focused on special education. [Exhibit 5, p. 1.] Ms. Dobler testified that, despite its name, SpLiT training taught general education concepts. [Exhibit 5, p. 316-317.] Specifically, SpLiT utilized a balanced literacy approach which the federal Office of Special Education Programs ("OSEP") had specifically advised Wyoming not to fund with SPDG grant monies. [Exhibit 5, pp. 320-321; Exhibit 8, p. 366.] Ms. Dobler was so concerned about the impermissible nature of SpLiT funding that, after contacting OSEP to confirm her concerns, she sent a message to Superintendent Hill's leadership team specifically informing them that SPDG funds could not be used to fund SpLiT unless the trainings were modified to include significantly more special education-related content. [Exhibit 5, pp. 320-321; Exhibit 18, pp. 1-2.] Additional warnings and expressions of concern were voiced by a number of WDE employees, including Kim Harper, Special Programs Administrator of Learning. After stating their objections, and relying on representations from leadership that WDE was dedicated to federal compliance, Dobler, Harper and other WDE staff members prepared and planned for the inclusion of additional special education materials in SpLiT workshops. [Exhibit 5, p. 319; Exhibit 8, pp. 371-372.]

Ultimately, Superintendent Hill and her leadership team chose to omit almost all of the additional special education materials prepared by WDE staff. Instead, SpLiT workshops were

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<sup>10</sup> As noted previously, the fact that SpLiT trainings were similar to previous T2T-related programs is likely due to the fact that the prior T2T programs were simply renamed "SpLiT" in an effort to hide their existence from the Legislature. As discussed in this section, the name "SpLiT – Special Education Literacy" was likely chosen in an effort to take funding dollars from federal grant monies restricted to special education instruction.



rolled out across Wyoming with as little as 20 to 40 minutes of special education instruction during a day and a half, 12-hour course. [Exhibit 8, p. 413.] Further, evidence indicates that this small portion of time allocated to special education topics often took the form of unscheduled “cameos” by special education teachers and semi-structured discussion during meal times. [Exhibit 8, p. 272; Exhibit 29, pp. 2-6; Exhibit 34, p. 1.] As characterized by one teacher in the MacPherson Report, special education was “just decoration” in the WDE’s SpLiT trainings. [Exhibit 34, pp. 1-2.]

The Committee is also concerned with how Superintendent Hill and her leadership team dealt with the federal government. Instead of listening to the advice of qualified staff and pursuing a policy of compliance with the SPDG’s requirements, Superintendent Hill and her leadership team embarked on an effort to mislead the federal government and compromise the integrity of WDE employees. Upon hearing that the SpLiT literacy initiative could not be funded with SPDG funds, Hill’s leadership team decided to see if the SPDG grant could be revised to be more vague, and therefore more permissive. Leadership apparently wanted to change the intent of the grant so that SPDG funds could be used to support SpLiT’s state-wide, general literacy instruction. [Exhibit 8, pp. 372-375.] Rather than being upfront with the federal government, however, Sheryl Lain and Christine Steele, members of Superintendent Hill’s leadership team, scheduled a telephone conference with federal grant administrators at OSEP during which they misled OSEP. Tiffany Dobler and Kim Harper were required to participate in this telephone conference. During the conference, Dobler and Harper were forced to talk while Ms. Steele and Ms. Lane mouthed the answers to questions posed by OSEP. [Exhibit 8, pp. 371-377.] Dobler and Harper were required to be vague and misleading with federal representatives because Wyoming’s SPDG was not designed to support a one-size-fits-all, general education/balanced literacy-focused initiative like SpLiT. Instead, Wyoming’s SPDG was awarded to provide special education-specific professional development focused on district-specific data. [Exhibit 8, pp. 406-407; Exhibit 34, p. 361; Exhibit 47.] SPDG funds were not permitted to fund Superintendent Hill’s state-wide rollout of a general literacy program. [Exhibit 8, pp. 11, 12.] Ms. Harper characterized the effort to amend the SPDG as unethical and dishonest. [Exhibit 8, pp. 371-377, 406.]

### **FINDINGS - Misuse of Federal Special Education Funds for T2T Trainings**

This Committee is gravely concerned with the actions of Superintendent Hill and the leadership team she assigned to handle the funding of WDE’s SpLiT workshops. Not only does it appear that the SpLiT workshops were illegally funded, but WDE’s leadership was made aware of the impropriety, ignored the pleas and warnings of experienced staff and, worst of all, required WDE employees to take part in misleading federal grant regulators. The Committee finds that, after traditional funding sources for professional development/T2T trainings were removed, the Superintendent and her team diverted federal funds designated for special

education to fund identical programs under a different name and nomenclature. The diversion of federal funds is currently under investigation by the federal government.<sup>11</sup>

Superintendent Hill did not let the law shut down or interfere with the initiatives she had started. Through convoluted statutory interpretation, improper budgetary transfers and practices, a complete disregard of legislative direction, the hiding of relevant information, the misapplication of federal grant monies and a blatant disregard for and exploitation of her employees, the Committee finds that Superintendent Hill continued to implement her statewide T2T professional development programs in complete disregard for all reasonable standards of good management and conduct. The effect, ultimately, was to divert funds away from special needs children and to her unauthorized initiatives.

## **B. MANAGEMENT OVERRIDES OF WDE FINANCIAL DIRECTIVES**

As illustrated in the MacPherson Report and the A-133 Audit (discussed herein), Superintendent Hill and her leadership team engaged in a practice of overriding the objections of the WDE Finance Division concerning violations of state and federal law and regulations. Following are some of the more egregious examples of Superintendent Hill and her leadership team authorizing expenditures of public funds over the objection of the WDE Finance Division.

### **1) Paul Williams Contract**

In August 2011, the WDE entered into a contract with an individual named Paul Williams and his company, the Corporation for Measurements and Statistics, “to provide the oversight for the statewide assessment system including RFP processes, the design of the 2012-2013 state assessment and development of the assessment program.” [Exhibit 55, p. 1.]

The need to enter into the contract with Williams and his company became a necessity as a result of Superintendent Hill’s decision to close the Laramie WDE office. This decision resulted in a drain of institutional knowledge due to the resignation of a vast majority of the WDE Assessment Division which was housed in Laramie. [Exhibit 78.] This loss of institutional knowledge also included the resignation of the former Director of the Assessment Division, Alan Moore.

Ultimately, WDE would enter into two separate contracts with Williams and his company, one to serve as Acting Assessment Director and the other for Williams to serve as a member of the Technical Advisory Committee (TAC) to WDE. [Exhibit 55, p. 9.] Payment under these contracts totaled \$261,971.26 from August, 2011 to October, 2012. This amount is almost two and one-half times the amount that Dr. Moore would have received in salary during the same period to perform essentially the same functions.<sup>12</sup>

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<sup>11</sup> Via correspondence dated March 28, 2014, Richard Esterbrook, CPA of the United States Department of Education, requested further information from the Wyoming Department of Education detailing the “management overrides” of Superintendent Hill and her leadership team of internal financial controls. [Exhibit 71.]

<sup>12</sup> Alan Moore was paid \$8,119.28 per month, or \$97,428 per year to serve as Director of Assessment for WDE.

Williams' original contract with WDE was for a term beginning August 10, 2011 and running through February 10, 2013. [Exhibit 55, p. 1.] (Hereinafter "the original contract" or "the original Williams contract"). This full contract amount was \$206,600.00. Rate of payment was set at \$11,477.78 per month. The source of funds for the contract was federal and state funds. **There was no maximum number of hours to be worked each month or any provision for overtime in this original contract.** Section 8 M. (General Provisions) of the contract specified:

Section 8 M. - Entirety of Contract: "This Contract, consisting of eight (8) pages, and Attachment A, consisting of four (4) pages, **represents the entire and integrated Contact between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.**" [Exhibit 55, p.1.]

The contract was signed by Christine Steele, WDE Co-Deputy Superintendent of Operations and a member of Superintendent Hill's leadership team. [Exhibit 55, p. 8.] The Contract Questionnaire states that it "was approved by leadership," specifically by Co-Deputy Superintendent of Administration Sheryl Lain. [Exhibit 56, pp. 1-2.] This original contract was amended on three occasions.<sup>13</sup>

There was no provision for the payment of overtime in either the original contract or the First Amendment to the contract. However, Amendment Number Two to the original contract stipulated that Williams would receive overtime at a rate of \$90 per hour not to exceed the total amount of \$73,170.00.

On January 17, 2012, Williams sent an e-mail to Christine Steele regarding payment for additional work. Williams stated:

"This email is to follow-up our original discussions on my contract conditions...about how to handle the number of days I work in excess of the numbers of days, you, me, and [Superintendent Hill] agreed to at the time we negotiated and wrote my contract. As a reminder, our projection...was that I would work 79 days in 2011, and then 15 days per month (120 hours) for the remainder of my contract...we originally agreed that at 'sometime later' we would figure out exactly how to handle my excess hours. I think now is the time to do so. My suggestion is that the contract be amended to add a clause that addresses how additional labor hours are to be compensated, and the rate at which they will be compensated. My preference is to negotiate an appropriate rate (my recommendation is \$90.00/hour), add the rate and mechanism for payment as an amendment to the contract, have me submit an invoice for the excess hours in 2011, and then have me invoice monthly for the

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<sup>13</sup> Amendments One and Three to the original Williams Contract are not at issue in this report.

excess hours each month, beginning January, 2012..." [Exhibit 56, p. 3.]

Christine Steele responded to this e-mail, "Thanks Paul. I agree the upcoming work is growing exponentially. I will confer with [Superintendent Hill] and get back with you to begin work on it." [Exhibit 56, p.3.]

On February 7, 2012, WDE Administrative Assistant Jude Serrano sent an e-mail to Grady Prince of WDE Accounting and Finance Division. Ms. Serrano stated, "I have attached the contract documents for Amendment Two of the Corporation for Measurement and Statistics contract. This is Paul Williams contract. Please process and let me know if you have any questions...." Then on February 9, 2012, Grady Prince forwarded this e-mail to Kevin Lewis, Research and Special Projects Manager for Learning for WDE.<sup>14</sup> Prince stated, "[Are] you sure we should pay more for working more than three weeks a month?" No response from Kevin Lewis has been located. [Exhibit 56, p. 18.]

Despite the concerns expressed by the WDE Finance Division, WDE entered into Amendment Two to the original Paul Williams contract on February 21, 2012. This amendment added overtime for hours worked over 120 hours per month with the total amount of allotted overtime not to exceed \$73,170.00. The overtime rate established in the contract was \$90 per hour. [Exhibit 55, p. 4.] Amendment Two provided:

**2. Purpose of Amendment.** This Amendment shall constitute the second amendment to the Contract between the Agency and the Contractor which was duly executed and became effective on August 16, 2011. **The purpose of this Amendment is to add funding for hours worked in addition to the initially agreed upon 120 hours per month associated with the deliverables described in Attachment A to the original Contract.**

The original Contract provided for oversight of the statewide assessment system including the RFP process, the design of the 2012-2013 state assessment and the development of the assessment program for a total Contract amount of Two Hundred Six Thousand and Six Hundred Dollars (\$206,600.00) with an expiration date of February 10, 2013. **This contract included a verbal agreement to work no less than 120 hours per month.**

Amendment Two became effective March 1, 2012. Attachment A to Amendment Two to the contract provided that Williams was entitled to "\$90 per hour for hours worked beyond 120 [hours a month]". Both the original contract and Amendment One to the contract provided that "No payment shall be made for services performed before the date upon which the last required

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<sup>14</sup> Despite the nebulous title and apparently possessing no formal legal training, Lewis was responsible for preparing and reviewing many of the contracts entered into by WDE during the Hill Administration. [Exhibit 9, p. 1020-21.]

signature is affixed to this [Contract or Amendment].” [Exhibit 55. p. 1.] This contract term is conspicuously missing from Amendment Two.

WDE paid a total of \$40,500.00 to Williams in "overtime payments" for services rendered under the terms of the original contract from August 2011 to February 27, 2012, prior to the effective date of Amendment Two. The original contract between the WDE and Williams was effective as of August 10, 2011. Amendment Two to the Williams contract took effect on March 1, 2012. [Exhibit 3, p. 524.] Paul Williams submitted monthly invoices for each month from August, 2011 through December, 2011, and each invoice provided a description of work completed by Williams throughout the month, listing an amount of \$11,477.78 billed monthly. Each invoice was signed and dated by Williams [Exhibit 56, pp. 5-9.] **Not one of these invoices provided a total of the hours worked by Williams in that month for WDE.** On February 28, 2012, almost two months after the last invoice for 2011 had been submitted by Williams, he submitted an "Excess Hours Invoice" for overtime during the months of August through December, 2011, which totaled \$26,370.00 [Exhibit 56, p. 14.] This was overtime calculated at a rate of \$90 per hour for 55 hours in August, 11 hours in September, 97 hours in October, 51 hours in November, and 79 hours in December. Within the invoice, Williams stated, "Specific tasks completed or in-process for the period August - December 2011 are found in the individual 2011 monthly invoices."

On April 20, 2012, Christine Steele drafted a Request for Payment Memorandum addressed to WDE Finance regarding, "Corporation for Measurement and Statistics - Amendment Two." In the Memorandum, Steele stated,

This memo is to request payment of the attached invoice in the amount of...\$26,370.00.... The original contract provided for a monthly payment of...\$11,477.78 which was predicated upon a mutual agreement for 120 hours of work per month.... The hours worked in addition to 120 were due largely to testimony at legislative committees, preparation for the 2012 legislative session and attendance at other committee meetings. I requested at that time that Amendment Two be written with the intent that it would cover work already completed between August 2011 and December 2011 that exceeded the verbally agreed upon 120 hours. **It is understood that services not covered under the original contract were rendered prior to the execution date of Amendment Two and that paying this invoice would cause the Wyoming Department of Education to be out of compliance with state and federal guidance and, should this be identified in a state or federal audit, will result in an audit finding, with resolution required and monitoring by the auditors of this**



**issue for three years to follow.** [Exhibit 17, p. 2; Exhibit 56, p. 13.]<sup>15</sup>

Paul Williams submitted invoices in the amount of \$11,477.78 per month for January, February and March 2012 which itemized the tasks that were completed each month. [Exhibit 56, pp. 9-12.] Again, not one of these invoices provided a total of the hours worked by Williams in that month for WDE. On April 25, 2012, Williams submitted "Excess Hours Invoice No. 2," in which he explained that he was owed \$21,870.00 in overtime compensation for "70 hours in January, 87 hours in February, and 86 hours in March." [Exhibit 56, p. 15.] Of this amount, \$14,130.00 was for 157 hours of overtime claimed by Williams in January and February of 2012, for services rendered prior to Williams and WDE entering into Amendment Two.

Also on April 25, 2012, Christine Steele sent another Memorandum to the WDE Finance Department regarding overtime hours for Paul Williams. The Memorandum was similar to the one previously sent on April 20, 2012, however, Steele requested to pay \$14,130.00 for Williams' overtime for both January and February, with no mention of the March overtime hours, for a total of \$14,130.00. [Exhibit 56, p. 16; Exhibit 17, p. 3.] The requested total payout of \$21,870.00 occurred on May 14, 2012. [Exhibit 56, p. 17.]

The Committee received testimony from Trent Carroll who, in April 2012, was Senior Accounting Analyst at WDE, concerning payment of overtime for services rendered under the original Williams contract. Carroll stated that Grady Prince in the Finance Division first received a voucher and invoice for payment to Williams of \$26,370.00 for hours in excess of 120 hours worked in each month from August 2011 through December 2011. Prince showed the voucher and invoice to Carroll and Greg Hansen, Section Supervisor in the Finance Division. Upon review of the invoice, voucher, and the original Williams' contract, Prince, Carroll and Greg Hansen determined to return the voucher to the Assessment Division and requested a memorandum with additional explanation as to why Williams was owed these funds for hours worked under the original contract. [Exhibit 3, p. 526; Exhibit 7, p. 604.] It was apparent to the personnel in the WDE Finance Division that there was no authority under the original contract to pay overtime funds for August–December 2011 to Williams. [Exhibit 3, p. 526; Exhibit 7, p. 604.]

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<sup>15</sup> On August 1, 2012, the Department of Audit released a report regarding 2011 expenditures and stated that they were, "...directed by the legislature to audit...the Wyoming Department of Education (WDE)...." One of the objectives of the audit was to, "...ensure such amounts were expended for assessment and testing." [Exhibit 75, p. 1.] The audit encompassed findings related to budget 6373, the budget used to pay Paul Williams. When addressing this particular budget in the audit, the Department of Audit stated, "...there was one instance where payment was made for services rendered prior to an effective contract. **The original contract called for payment based on 120 work hours per month. During the period August 2011 through December 2011 the contracted individual worked 293 hours over the 120 hours specified in the contract.** The individual was paid \$26,370 for the additional time worked. The amendment to the contract states: 'The purpose of the Amendment is to add funding for hours worked in addition to the initially agreed upon 120 hours per month...as described in...the original Contract...The Amendment shall commence on March 1, 2012.' The contract amendment does not specifically indicate it is to be used to pay for additional hours prior to March 1, 2012. **The \$26,370 was not included as a questioned cost...**" [Exhibit 75.] The Committee finds it highly likely that given the language of the audit, the auditors were not provided the Steele Request for Payment Memorandum.

Carroll stated that the Finance Division then received Christine Steele's Request for Payment Memorandum of April 20, 2012. Carroll could not remember receiving any similar payment memos before the Hill administration. [Exhibit 3, p. 529.] After receiving the Payment Memorandum, Carroll discussed it with Greg Hansen. Carroll stated that he and Greg Hansen did not authorize payment of the invoices for Williams overtime claims for August through December 2011 immediately after receiving the memorandum. In fact, they had even greater concerns. Carroll and Greg Hansen took their concerns to Fred Hansen, who was then the Chief Financial Officer at WDE. Carroll testified that Fred Hansen talked to John Masters, then Legal Counsel to Superintendent Hill, and Masters told Fred Hansen that both he (Masters) and Superintendent Hill were aware of the Christine Steele Request for Payment Memorandum requesting payment to Williams for services already rendered under the original contract, and that WDE Finance Division was to process the payment. [Exhibit 3, pp. 529-530.] Greg Hansen also testified before the Committee that Fred Hansen told Masters and Superintendent Hill about the invoices for services already rendered, and that WDE finance personnel were ordered to pay them. [Exhibit 7, p. 604.]

Carroll and Greg Hansen were still concerned about issuing payment to Williams for services which they very much believed were in excess of the original contract terms and were contrary to law. Mr. Carroll made notes to the file, documenting the requested payments and noting that the overtime payments were made "under objection by the [WDE] Finance Division." Greg Hansen stated that in the WDE Finance Division "when an internal control is circumvented by management override, we wanted to make sure that was documented." [Exhibit 7, p. 605.] Mr. Carroll further stated, "Even after concerns were brought by [WDE] Finance, and acknowledged by the leadership team and the Superintendent, there was a complete disregard for agency internal controls and federal compliance." [Exhibit 17, p. 604.] Carroll testified that his main concern in paying the invoices was:

that this payment was requested from federal funds. The memo from Ms. Steele indicated that paying this invoice would cause a state and federal compliance issue. At the time Ms. Steele was the deputy over the federal programs division and had previously been the director of the federal programs division. She was familiar with the rules and requirements of federal funds. It didn't seem right to process a payment that she believed would cause a compliance issue. [Exhibit 3, pp. 530-531.]

The Finance Division was also ordered to pay the second voucher for overtime payments to Williams in January and February of 2012 over their objection. [Exhibit 17, p. 1; Exhibit 56, p. 16; Exhibit 17, p. 4.] Payments of these funds came from the WDE federal assessment budget, which is budget code 6373. [Exhibit 3, pp. 533-534.]

### **FINDINGS – Paul Williams Contract**

The Committee finds many aspects of the WDE contracting with Paul Williams troubling. First, the Committee finds it extremely unsettling that the WDE leadership would agree to pay Williams based on 120 hours of work a month. Williams was already receiving a



salary in excess of his predecessor, without overtime pay beginning at 120 hours a month. It appears completely unreasonable to pay Williams based on a 120 hour month when all full-time State employees of the Department of Education are paid with the expectation that they provide the State of Wyoming with 173.33 hours of work a month.

The Committee is also troubled that WDE would authorize payment of funds for overtime to Williams for services rendered beyond the payment authorized by the original contract. Especially concerning is the fact that Superintendent Hill, her legal counsel John Masters, and other members of WDE leadership were made aware of the potential consequences of authorizing the payment and *still* ordered personnel from the Finance Division to issue payment. In fact, Ms. Steele, with the knowledge of Superintendent Hill and Masters, authorized payment to Williams for services already rendered knowing full well that such payment “would cause the Wyoming Department of Education to be out of compliance with state and federal guidance and, should this be identified in a state or federal audit, will result in an audit finding.” [Exhibit 63.]

34 CFR Part 76, also known as the Federal Education Department General Administrative Regulation (EDGAR) provides:

**§ 76.700 Compliance with statutes, regulations, State plan, and applications.**

A State and a subgrantee shall comply with the State plan and applicable statutes, regulations, and approved applications, **and shall use Federal funds in accordance with those statutes, regulations, plan, and applications.** [Authority: 20 U.S.C. 1221e-3, 3474, and 6511(a).]

**§ 76.702 Fiscal control and fund accounting procedures.**

A State and a subgrantee shall use fiscal control and fund accounting procedures that insure proper disbursement of and accounting for Federal funds. [Authority: 20 U.S.C. 1221e-3, 3474, and 6511(a).]

The law of the State of Wyoming on providing additional compensation for services already rendered in excess of a contract amount is clearly stated in the Wyoming Constitution. The Constitution restricts the Legislature, and anyone else, from attempting to appropriate funds for compensation for past official performance. Article 3, Section 30 states “**No bill shall be passed giving any extra compensation to any public officer, servant or employee, agent or contractor, after services are rendered or contract made.**” The Legislature is given the exclusive power to appropriate monies of the State, and no member of the executive branch is given that authority without legislative delegation. In order for funds of the State to be spent, it must be done on appropriation of the Wyoming Legislature. [See Article 3, Section 35 of the Wyoming Constitution.] If appropriations must be made by the Legislature, and no bill may be passed giving extra compensation to any public servant, the Constitution cannot be subverted by

an elected official who attempts to expend funds without legislative approval. Such conduct is a violation of the Constitution and a violation of the laws of the State. The Committee finds that payment of funds authorized under Amendment Two to the Williams contract for “overtime” for services previously rendered under the original contract constitutes a violation of State law.

W.S. § 9-1-403(b)(v) provides that the State Auditor shall not issue payments of funds “[f]or payment on a contract for professional consultant or other services unless the agency has certified **that the contract for the services has been reduced to writing before the services are performed....**” Additionally, the very terms of the original Williams contract provide that it is the total agreement between WDE and Williams and that Williams was only entitled to \$11,477.78 per month. Parties to a professional services contract are bound by the terms of that contract. The WDE had no statutory or contractual authority to provide additional compensation to Williams for services rendered under the original contract.

Finally, the Committee finds that Ms. Steele and Superintendent Hill violated the 2012 Section 5, footnote 3(e) (2012 Original Senate File 1, popularly known as the Budget Bill) by failing to notify the Governor that the \$40,500 requested for overtime pay for Williams from August 2011 through February 2012 was not “necessary to fund testing and assessment **required by law.**” The 2012 Budget required all funds within account 6373 (from which Williams was paid) to be deposited into the Education Testing and Assessment Account. [See 2012 Wyoming Session Laws Chapter 26, Section 5, footnote 3(b).] All expenditures from this account were required to be certified by the Governor as “necessary to fund testing and assessment **required by law**” and could not “be expended for any purpose other than for education testing and assessment **as required by law.**” As outlined above, Superintendent Hill and her leadership team were well aware not only that the expenditure of funds to pay Paul Williams for services already rendered was not “required by law” but that the expenditure was not even “*authorized by law.*” They admitted that and more in the Steele Request for Payment Memoranda. Yet Superintendent Hill and her leadership team appear to have concealed the true purpose of the expenditure of these funds from the Governor. The Committee was not able to locate any documentation from either the WDE or the OSPI indicating that the Governor was provided the Steele Request for Payment Memorandum when WDE requested that the Governor certify expenditures from the Education Testing and Assessment Account.

The Committee finds that this apparent failure of the Superintendent and her leadership team to provide the Governor with relevant information on the legality of a requested expenditure from the Education Testing and Assessment Account is a violation of law on the part of, or at the direction of, Superintendent Hill.

## 2) **Shan Anderson Contract**

From August 1, 2011 through November 15, 2011, WDE entered into a contractual agreement with Shan Anderson to provide professional services related to WDE's 3+8 Success Institutes and the Summer Camp event. [Exhibit 21, pp. 1-14.] The total contract amount was not to exceed \$17,000, although the amount actually paid under the contract was \$7,477.69. [Exhibit 57, pp. 9-17.] The contract between Ms. Anderson and WDE was a sole source

contract, meaning that WDE did not put the contract out to bid. Instead, Ms. Anderson was awarded the contract without competition or recruitment of other qualified contractors. The contract was signed by Sheryl Lain, Instructional Leader, a member of Superintendent Hill's leadership team. Ms. Lain signed a sole source justification letter (bid waiver request) that accompanied the contract. The justification letter, after describing the goals of the contract and related professional development programs, simply stated, "[b]ased on the specific program, a bid waiver will provide the department with the most qualified vendor to perform the required services." [Exhibit 11, p. 465.] No other justification for Ms. Anderson's hire was given. Later, Ms. Lain approved payment on some of the invoices submitted by Ms. Anderson under the contract.

The Committee is concerned because Shan Anderson is Sheryl Lain's daughter. Ms. Lain did not disclose this fact to the financial personnel to whom the bid waiver request was made. [Exhibit 21, p. 15.] To the extent other leadership team members knew that Shan Anderson was Ms. Lain's daughter, they did nothing to prevent her improper hire. This situation presents a clear example of the Hill administration's disregard for standard procedure and compliance with the law. The Committee finds that Ms. Anderson's hiring violated a number of laws, policies and required procedures:

- 1) The bid waiver requested by Ms. Lain was clearly inadequate and gave virtually no justification for the hire of Ms. Anderson without considering other qualified contractors;
- 2) Policies requiring the disclosure of familial relationships within the Department were either insufficient or were ignored by members of Superintendent Hill's leadership team;
- 3) W.S. § 9-13-104. Nepotism, states:
  - (a) No public official, public member or public employee shall advocate or cause the employment, appointment, promotion, transfer or advancement of a family member to an office or position of the state, a county, municipality or a school district. A public official, public member or public employee shall not supervise or manage a family member who is in an office or position of the state, a county, municipality or school district.
  - (b) A public official, public member or public employee, acting in his official capacity, shall not participate in his official responsibility or capacity regarding a matter relating to the employment or discipline of a family member.
- 4) W.S. § 9-13-109. Penalties, states:

(b) Violation of any provision of [the Wyoming Ethics and Disclosure Act] constitutes sufficient cause for termination of a public employee's employment or for removal of a public official or public member from his office or position.

5) State of Wyoming Code of Ethics (Executive Order No. 1997-4), Section 6 states:

(A) No public employee shall engage in:

(ii) Taking official action in a matter in which the public employee has a close personal or financial relationship to a party.

(iv) Except as allowed by state law or State of Wyoming Personnel Rules, giving preferential treatment to any person.

(B) Conduct which constitutes an abuse of authority.... [including], but not necessarily limited to:

(ii) Awarding, participating in a decision to award or participating in the administration of a State of Wyoming contract, if the employee or any person with whom the employee has a close personal or financial relationship (this includes all members of the public employee's immediate family) is a party to the contract;

6) State of Wyoming Personnel Rules, Chapter 1, Section 16 states: "Employees shall be courteous, considerate, and impartial in dealing with and serving the public. Employees shall conduct themselves in a manner that will not bring discredit or embarrassment to the State";

7) State of Wyoming Code of Ethics (Executive Order No. 1997-4), Section 5 states that all public employees shall:

(C) Carry out the policies and objectives of the State of Wyoming as established by the state, executive order, or rule, while adhering to established standards for work and performance.

(D) Work in cooperation with other public employees, and act within the scope of the authority delegated to them.

(G) Strive to be honorable, courteous, and dedicated to advancing the public good.

(H) Avoid conduct that compromises the integrity of the public office or creates the appearance of impropriety.

### **FINDINGS – Shan Anderson Contract**

As a member of Superintendent Hill's leadership team and a public employee, Ms. Lain violated the laws and policies outlined above when she chose to hire her own daughter as a sole source contractor for WDE. Ms. Lain did so without disclosure of her familial relationship with Ms. Anderson and without making any reasonable attempt to justify hiring her daughter with a sole source contract. The fact that the contract was drafted, executed, performed and paid, without objection, is evidence of the type of conduct that was allowed to occur under Superintendent Hill's leadership. Superintendent Hill admitted in testimony before this Committee that it was her responsibility to assure that the members of her leadership team followed the law. [Exhibit 9, p. 1083.] Clearly, Superintendent Hill failed in this duty.

Further, to the extent Ms. Lain was unaware of the prohibition against hiring her daughter for WDE contract work, as was her testimony before this Committee and in the MacPherson Report, her ignorance is no defense for Superintendent Hill. [Exhibit 11, p. 466; Exhibit 40, p. 1.] The only reasonable method for Superintendent Hill to assure that her leadership team was compliant with the law was to make them aware of that law. Ms. Lain's lack of knowledge about the basic procedural and legal standards required of all Wyoming agencies is strong evidence of the deficiencies that existed under Superintendent Hill's administration.

Finally, the Committee finds that Superintendent Hill should have known that Shan Anderson was providing contract services to WDE. Ms. Lain's testimony establishes both that Superintendent Hill knew Shan Anderson was Ms. Lain's daughter and that Superintendent Hill saw Ms. Anderson working at the trainings for which she was hired. Although Ms. Lain suggests that Superintendent Hill may have thought that Ms. Anderson was a volunteer at the trainings, that testimony conflicts with her own testimony stating that there were no volunteers who worked at those trainings. Superintendent Hill was also on constructive notice that Shan Anderson was under contract with the WDE because Superintendent Hill and Ms. Anderson flew together on the State plane from Cheyenne to Jackson and back in September 2011. [Exhibit 9, p. 1080; Exhibit 11, pp. 478, 493; Exhibit 79.]

The sole source contract that Sheryl Lain entered into with her daughter, Shan Anderson, is evidence of the unacceptable conditions that existed at WDE under Superintendent Hill's leadership and the leadership's propensity to violate legal standards and procedures. By Superintendent Hill's own admission, she was responsible for ensuring that her leadership team followed the law. [Exhibit 9, p. 1083.] The Shan Anderson sole source contract signed by her mother, WDE Instructional Leader Sheryl Lain, is yet another example of Superintendent Hill's failure to ensure that legal requirements were followed at WDE under her administration.

### **3) Victoria Leshar Contract Issues**

There are two issues of concern regarding WDE's contracts with Victoria Leshar. First, Ms. Leshar was awarded a sole source contract which provided for payments approaching

\$1,000 per hour, given the limited work performed under the contract. Second, some of her graduate-level education work was paid by the State of Wyoming in violation of the WDE personnel rules and regulations.

Victoria Leshar worked for WDE on three occasions. Two times, Ms. Leshar provided services to WDE under professional services contracts as an independent contractor. Later, Ms. Leshar was hired as a full-time, at-will employee. Under Ms. Leshar's first professional services contract, she helped WDE deliver T2T related professional development by taking part in various T2T trainings and workshops. Ms. Leshar's second contract required Ms. Leshar to train teachers and provide coaching to underperforming schools. In this job, Ms. Leshar apparently provided trainings through WDE's WEN video system.

The Committee is concerned with the second professional services contract between WDE and Ms. Leshar. Ms. Leshar's second contract with WDE was executed on September 22, 2011, and had a contract term from September 1, 2011 until June 30, 2012. The full contract amount was \$46,666.66, with monthly payments of up to \$3,416.66. The contract did not specify any minimum number of hours that were required to be worked. [Exhibit 19, pp. 1-10.] At the time of execution, the contract would normally have been signed by a WDE employee named Gail Eisenhauer. Ms. Eisenhauer, however, was left out of discussions surrounding Leshar's contract and understood that it provided up to \$46,000 in payments for the performance of only one limited task: to provide one, one hour, video coaching session per week to tutors stationed at Fremont School District #38. [Exhibit 6, p. 81.] Consequently, she refused to sign it because she was concerned the contract was to pay Ms. Leshar in excess of \$1,000 per week for only one hour of training.

Because Ms. Eisenhauer would not sign Ms. Leshar's professional services contract, a member of Superintendent Hill's leadership team, Christine Steele, signed the contract. Disturbingly, the contract was signed "Christine Steele for Gail Eisenhauer." The evidence indicates that Ms. Eisenhauer never approved the contract or provided Ms. Steele with consent to sign on her behalf. [Exhibit 6, p. 82; Exhibit 30, p. 1.] Ms. Eisenhauer was upset and displeased that Ms. Steele signed the contract using her name. [Exhibit 6, p. 82.]

As mentioned in the MacPherson Report, it is unclear exactly how many hours Ms. Leshar worked under her contract. The MacPherson Report suggests that Leshar worked only 50 hours some months and another month she worked no hours. [Exhibit 54, p. 11.] Statements made in the MacPherson Report also indicate that the work demands of Ms. Leshar's professional services contract may have been so light so as to allow her to maintain her full time employment with Laramie County School District #1 while performing her contract with WDE. [Exhibit 6, p. 81; Exhibit 45, p. 1.]

Another issue of concern is the payment of Victoria Leshar's tuition by the State of Wyoming. In order to maintain expertise at WDE, the agency has a policy whereby it can pay or help pay an employee's education expenses.



WDE's handbook places limitations on education assistance payments. According to the handbook, "[t]uition reimbursement will only be considered for employees who have worked at least one calendar year for the WDE." [Exhibit 57, p. 22.] In yet another example of Superintendent Hill's leadership team overriding established laws and policies applicable to their actions, Hill's leadership team violated the tuition reimbursement policy when it reimbursed tuition fees paid by Victoria Leshner.

In June 2012, Victoria Leshner was hired as an at-will employee in the Standards and Learning Division of WDE. Her contract was signed by Sheryl Lain, a member of Superintendent Hill's leadership team. Soon after being hired and pursuant to discussions with Ms. Lain, Ms. Leshner enrolled in a PhD program in the area of Instructional Improvement. Contrary to the limitation stated in the WDE's handbook, on September 13, 2012, Ms. Lain and a WDE division director signed an authorization granting Ms. Leshner up to \$42,000 in tuition reimbursements. [Exhibit 57, p. 21.] At the time the form was signed, Ms. Leshner had not worked for WDE for one year. Pursuant to the authorization, a reimbursement payment was made to Ms. Leshner in January 2013 in the amount of \$2,390.70, again, less than one year after she had signed her contract of employment with WDE. [Exhibit 57, p. 18.]

The propriety of the reimbursement to Ms. Leshner was brought to Ms. Lain's attention prior to making the reimbursement payment by WDE Finance Division personnel. As with other instances of management override at WDE, Ms. Lain choose to disregard the agency's reimbursement policies and, instead, wrote an e-mail to finance personnel overriding the agency's reimbursement rule and vaguely stating, "it was decided to waive the one year note due to a variety of reasons." [Exhibit 57, p. 19.] This ambiguous explanation for the management override not only makes a mockery of the agency's rules, but provides no indication as to why Ms. Leshner's tuition was authorized in the first place. Internal e-mails obtained by the Committee provide little additional guidance. In these e-mails, Ms. Lain ambiguously explains that Ms. Leshner's course work "would be very beneficial to our work as we go forward to improve student performance in Wyoming." [Exhibit 57, p. 20.]

#### **FINDINGS – Victoria Leshner Contract**

Regardless of the motivation behind Ms. Lain's actions, the treatment of Ms. Leshner's contract and tuition reimbursement waiver provides examples where Superintendent Hill and her leadership team refused to comply with the law and with rules applicable to their conduct. The Committee finds that, though Superintendent Hill did not take part in the process that led to Ms. Leshner's improper reimbursement, it is evidence of her continued failure to properly oversee the operation of the Department and the actions of her own leadership team.

#### **4) A-133 Audit / Management Override**

In March 2014, the Committee received a copy of Wyoming's Statewide Single Audit (Wyoming Compliance Report) for the fiscal year ended June 30, 2013 ("2013 A-133 audit"), prepared by the Cheyenne accounting firm, McGee, Hearne and Paiz, LLP. This audit is known



as an “A-133 audit,” based on its analysis of federal program compliance requirements described in OMB Circular A-133 Compliance Supplement. The audit is performed to assess each state agency’s ability to detect noncompliance with federal program requirements, including federal grant restrictions and rules. The audits are required by federal law and necessitate a review of internal controls used to ensure that agencies are not committing infractions which could have a direct and material effect on major federal programs. In the audits, any deficiencies in internal controls are identified by two categories: “significant deficiencies” and deficiencies which represent a “material weakness.” A deficiency exists when the design or operation of an internal control does not allow management or an employee, in the normal course of performing their assigned functions, to prevent, detect or correct an issue of noncompliance on a timely basis. While “significant deficiencies” can be serious, a “material weakness” is more serious and is defined to be a deficiency in internal control such that there is a reasonable possibility that material noncompliance with a federal program requirement will not be prevented, detected and corrected on a timely basis.

Wyoming’s 2013 A-133 Audit concludes that a number of significant deficiencies existed within WDE’s internal controls during fiscal year 2013.<sup>16</sup> These deficiencies evidence WDE’s violation of federal law and place WDE at risk of facing federal compliance actions. More serious, however, is the fact that the audit discovered “management overrides” during Superintendent Hill’s last full fiscal year (FY2013) as the head of WDE which constitute a material weakness in WDE’s internal controls. **This disturbing finding necessarily rises to the level of a material weakness because management override represents an intentional effort by management to override the internal controls which are meant to guarantee compliance with federal regulations.** This audit finding is the *only* finding of intentional misconduct in the 2013 A-133 Audit:

The Wyoming Department of Education (WDE) Internal Control guidance was compromised by management override on multiple occasions throughout the period of fiscal year 2013. Regardless of the specificity and stringency of the internal controls in place at the time, **management decisions were made that were not allowable or advisable and overrides were directed to Finance staff to cut through steps that were considered bureaucracy.** [Exhibit 84.]

The audit links a number of serious problems at the WDE, many of which are discussed in this report, to these unallowable and inadvisable management overrides. These include: 1) a strained work environment due to intimidation, the uncertainty of job security and management override of internal controls; 2) improper charges to federal programs; 3) federal and state

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<sup>16</sup> These significant deficiencies included: 1) the failure to maintain documentation of WDE’s “during-the-award monitoring” site visits as the result of significant staff turnover and movement; 2) the failure to monitor and track required limitations on administrative and state activity expenses through the life of various grant programs; 3) the failure to monitor level of effort state funding match requirements for grant years which closed during the fiscal year ending June 30, 2013; 4) the misalignment of pay with the performance of duties consistent with the grant accounts from which the pay was deducted, including inaccurate time and effort logs; 5) and the movement of payroll withdrawals to available grant budgets without being able to produce time and effort logs which support the withdrawal of payroll from those grant budgets.

funding of T2T-related programs in potential violation of state law; 4) sole-source WDE service provider contracts with a member of WDE leadership's immediate family; 5) federal grant supervision by a member of a supervised person's family; 6) prohibited retroactive employment compensation payments; and 7) a myriad of problems surrounding the use of School Improvement Grant funds at Fremont County School District #38.<sup>17</sup> [Exhibit 84.]

### **FINDINGS - A-133 Audit / Management Override**

The full consequences of the conduct and deficiencies outlined in the 2013 A-133 audit cannot be determined at this point. However, via correspondence dated March 28, 2014, the Committee is aware that Richard Esterbrook, CPA for the United States Department of Education, has requested further information from WDE detailing the "management overrides" of Superintendent Hill as described in the A-133 audit. It appears that the federal government has taken note of the audit findings and it may be too late for Wyoming to avoid some form of federal compliance action.<sup>18</sup> Regardless of what happens in the future, however, it is abundantly clear to this Committee that Superintendent Hill's leadership at WDE has been unacceptable. The audit findings, alone, detail an education administration led by Superintendent Hill that cared little about the mandates of federal or state law and which regarded legal and regulatory compliance as a bureaucratic nuisance that could be overridden in favor of blindly pursuing new educational initiatives.

The 2013 A-133 Audit findings corroborate the testimony of WDE Finance personnel who indicated that management override was a prevalent and problematic method of business under Superintendent Hill's administration. [Exhibit 3, pp. 528-533; Exhibit 7, pp. 605, 614; Exhibit 1 pp. 662-663, 664-675.] A clear example of that override was provided by Trent Carroll in his testimony about payments made to assessment contractor Paul Williams over the strenuous objections of finance personnel. [Exhibit 3, pp. 528-533.] Mr. Carroll's testimony includes descriptions of the memorandums sent by Hill's leadership team demanding Mr. Williams' payment while also acknowledging that payment will cause WDE to be out of compliance with state and federal guidance and, if discovered in a state or federal audit, will result in audit findings requiring three years of auditor monitoring. [Exhibit 3 pp. 3-4.]<sup>19</sup> During the hearings held by the Committee, Diane Bailey testified that she was so concerned with management override of finance personnel's decisions and judgment that she, in fact, talked to the auditors about the problem in an effort to focus their attention on the issue. [Exhibit 1, pp.

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<sup>17</sup> The first three listed problems were initially identified and reported in the 2012 A-133 audit as finding 2012-SA-09.

<sup>18</sup> Testimony before the Committee indicates that some remedial action has already taken place, whether at the insistence of the federal government or not. As described in this report, Superintendent Hill and her leadership team likely violated federal grant restrictions when they used SPDG federal grant funds to pay for SpLiT trainings which did not have a sufficient focus on special education. Testimony indicates that, upon Superintendent Hill's removal as head of the WDE, some state funds were back-filled into the SPDG grant to account for federal SPDG funds that were improperly spent on non-special education SpLiT trainings. [Exhibit 5, pp. 322-323.]

<sup>19</sup> For full description of the issues surrounding the Paul Williams contracts, see section B(1) of this Report, starting on page 37.

673-674.] Her fears appear to have been justified and her concerns validated based on the 2013 A-133 audit findings and the new efforts by federal regulators to investigate the matter.

### **C. ESTABLISHMENT OF A READING PROGRAM AT FREMONT #38**

#### **1) Background Information on the Involvement of WDE in Fremont 38**

Beginning summer 2011, the Wyoming Department of Education, under the direction of Superintendent Hill, devoted considerable state resources and personnel to implement an intensive one-on-one reading program for struggling readers at Arapahoe Elementary School in Fremont School District #38. The program was known as “Wyoming Read” (WYR). No legislative appropriation was made for the program. Superintendent Hill implemented the program with no apparent funding source.<sup>20</sup> WYR was ultimately financed at Fremont #38 by a federal School Improvement Grant (SIG), funded by the American Recovery and Reinvestment Act (ARRA or Stimulus Funds). The use of WYR at Fremont #38, the manner in which WDE employees provided direct student instruction, the hiring of contract WYR coaches and tutors, and issues surrounding the funding of WYR at Fremont #38, were all brought to the attention of Catherine MacPherson and her team. The MacPherson Report detailed the allegations concerning the involvement of WDE at Fremont #38 in Chapter 6.

#### **2) Wyoming Read Program Implemented at Fremont #38**

By way of background, WYR is a reading program developed primarily by Sheryl Lain, who served as Superintendent Hill’s Instructional Leader during the relevant time period. Lain describes herself as a nationally and internationally recognized reading expert. [Exhibit 11, pp. 437-438.] Lain based WYR on a reading program titled “Reading Recovery.” It appears that one of the driving factors behind the development of WYR was the expense of Reading Recovery. [Exhibit 11, pp. 428-429.] Many school districts in Wyoming would not devote the resources necessary to implement Reading Recovery. [Exhibit 11, pp. 428-429.] Lain and her co-developers apparently created WYR, at least in part, as a low-cost alternative to Reading Recovery. Lain states that WYR has been used to help hundreds of students in Wyoming. The evidence suggests that WYR has never been formally peer reviewed and the results generated by the program have not been subjected to scientifically rigorous review utilizing a control group.<sup>21</sup> [Exhibit 11, pp. 448-456.]

By summer 2011, Superintendent Hill and Lain were eager to implement WYR at a Wyoming School district, presumably in an effort to support their number one stated priority of enhancing literacy in Wyoming’s students. [Exhibit 58, pp. 32-33 & 40.] They found their

<sup>20</sup> For a partial analysis of how WDE funds were channeled to the Fremont #38 program, see Appendix II to this Report.

<sup>21</sup> The issue of whether WYR is “research-based” and “vertically aligned from one grade to the next” became an issue of importance when federal School Improvement Grant (“SIG”) funds were used to implement WYR at Fremont #38. Federal regulations require that any program implemented using SIG funds be research-based and vertically aligned. [See 74 FR 65618 – Federal Regulations for SIG authorized under § 1003(g) of Title I of the Elementary and Secondary Education Act.]

opportunity at Arapahoe Elementary School in Fremont #38 School District. Arapahoe Elementary had performed well below the state average in reading in 2010.

On July 22, 2011, in a staff meeting at WDE, Cindy Hill and Sheryl Lain pitched the idea of using \$10 million of Stimulus Act (ARRA) funds to implement an intensive one-on-one reading program in a Wyoming School District.<sup>22</sup> The program they desired to use was WYR. [Exhibit 58, pp. 32-33 & 40.] At the same time this meeting was occurring, Randy Tucker, IT Director for Fremont #38, without the approval of the school district superintendent or the Fremont #38 School Board, called WDE asking for help to raise student reading scores on PAWS at Arapahoe Elementary School (AES). [Exhibit 58, pp. 32-33 & 40.] In response, and over an objection by some WDE staff members, Superintendent Hill required that WDE go to Fremont #38 because “the kids need something and we have to help them.”<sup>23</sup> [Exhibit 54, p.1]. Within 72 hours of Mr. Tucker’s phone call, “the perfect storm” came together to implement WYR at Fremont #38. [Exhibit 58, p. 40.]

On July 26, 2011, Superintendent Hill, John Masters, Sheryl Lain and others traveled to Fremont #38. They met with Fremont #38 Board Members, the Fremont #38 superintendent, Tucker, the Technology Director, teachers from each grade at Arapahoe Elementary School and eight or nine WDE employees. [Exhibit 54, p.1; Exhibit 58 pp. 32-33.] Sheryl Lain presented her program, WYR, to the Fremont #38 officials at that meeting. [Exhibit 58, p.34.] Fremont #38 officials appeared receptive to the idea of using WYR at their school if the WDE could secure funding to implement WYR.

The Fremont #38 School Board had a special meeting to discuss implementation of WYR at Arapahoe Elementary School on September 21, 2011. Attending the meeting were: Fremont #38 Business Manager John Law, Randy Tucker, Fremont #38 Attorney Tracy Copenhaver, and members of the WDE including: John Masters, Kevin Lewis, Gail Eisenhauer, Jane Brutsman and Paige Fenton-Hughes. [Exhibit 58, p. 45.] Copenhaver stated his concern that “details were not addressed prior to the launching of the program.” [Exhibit 58, p. 47.] One of those concerns involved the classification of the tutors and who would employ them. After lengthy discussion, the Board voted unanimously to adopt the WYR program for 60 days pending final approval of an MOU. [Exhibit 58, p. 46.] There was no secure funding source to implement WYR in Fremont #38 at this time. It is unclear to the Committee what the true legal relationship between Fremont #38 and WDE, as related to the WYR program, was at this point in time, and it is easy

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<sup>22</sup> The American Recovery and Reinvestment Act of 2009 (“ARRA”) provided significant new funding for programs under Title I, Part A of the Elementary and Secondary Education Act of 1965 (“ESEA”). Specifically, the ARRA provides \$10 billion in additional Fiscal Year (FY) 2009 Title I, Part A funds to local education agencies (“LEAs”) for schools that have high concentrations of students from families that live in poverty in order to help improve teaching and learning for students most at risk of failing to meet state academic achievement standards.

<sup>23</sup> Gail Eisenhauer provided testimony about Hill’s approach toward engagement at Fremont #38: “[T]he superintendent said -- we talked about the [WYR in Fremont #38] project in general, and she said that -- something about she didn't want to hear any negativity about it, that we weren't going to waste a lot of time planning when there were kids out there that needed our help, and that she was asking all of us to support this project and be on board with it; that we were going to do -- that we were going to go forward with it because there were kids that needed help.” [Exhibit 6, p. 56.]

to conclude from the testimony that the program was logistically ill-conceived from the beginning.

On October 7, 2011, nearly a month and a half after the program began, Sheryl Lain signed an interagency agreement between the Wyoming Department of Education and Fremont #38. [Exhibit 58, pp. 2-8.] The agreement contained the following terms, in part:

**C. Availability of Funds.** Each payment obligation of either party is conditioned upon the availability of state or federal government funds which are allocated to pay the DISTRICT or WDE. If funds are not allocated and available for the either party to carry out the responsibilities and/or services, which that party has agreed to provide pursuant to the terms of this MOU, then either party may terminate this agreement at the end of the period for which the funds are available. The WDE shall notify DISTRICT at the earliest possible time if this Agreement will or may be affected by a shortage of funds. No liability shall accrue to the WDE in the event this provision is exercised, and the WDE shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section. This provision shall not be construed so as to permit the WDE to terminate this Agreement in order to acquire similar services from another party.

**D. WYR.** WYR is a reading instructional program developed by Sheryl Lain and used by her permission as an instructional intervention tool for Grades 2 through 8. Younger children may use a specialized tool described as Primary WYR. WYR is also an acronym for "Wyoming Reads" as the instructional program is also known.

An attachment to the Agreement provided that WYR was to be the only reading program implemented at Fremont #38 during the term of the Agreement. [Exhibit 58, p. 6]

### 3) Funding of WYR at Fremont #38

WYR was implemented by WDE at Fremont #38 without legislative authority and without a funding source. The Department attempted a number of avenues to try to secure funding for the program. Documentation produced to the Committee establishes that Superintendent Hill first attempted to gain the support of Governor Mead to authorize use of Stimulus Funds to implement WYR at Fremont #38. The evidence makes it clear that Superintendent Hill was seeking federal ARRA funds to fund the WYR program at Fremont #38.<sup>24</sup> Those funds did not come through as requested. A scramble ensued to find funds to cover the dollars that were already being spent by Arapahoe Elementary School implementing WYR that the State of Wyoming had promised to reimburse.

In brief, a plan was developed in which the expected \$650,000 in program costs would be split between Fremont #38 and WDE. [Exhibit 58, pp. 35-39.] Fremont #38 would rely on the

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<sup>24</sup> For the Committee's complete report on the issue of Superintendent Hill's testimony concerning ARRA funds for Fremont #38, see page 86 of this Report.



successful application for a School Improvement Grant (SIG)<sup>25</sup> and WDE would finance their costs by diverting SSoS (Statewide System of Support) funds and by using other WDE budgets. Ultimately part of the SIG grant was used to reimburse the WDE Title 1, Instructional Support Program for about \$134,000. [Exhibit 58, pp. 36-38; Exhibit 54, p. 8.]

For this plan to work, an existing SIG application, already developed by a Fremont #38 consultant, Pam Lange of Technology & Innovation in Education (TIE), was abandoned. In its place, a new SIG grant was developed which would support the costs incurred by Fremont #38. The process of scrapping the existing SIG application and preparing the new SIG application was occurring the last week of September 2011. On September 20, 2011, John Law was directed by Fremont #38 Superintendent Steve Henderson to notify Pam Lange that Fremont #38 was no longer going to work with TIE on their SIG application and subsequent professional development activities. [Exhibit 58, pp. 43-44.] The original grant application was pulled and ultimately replaced with the WDE grant application. [Exhibit 45, p. 2.] In other words, the independent grant consultants were fired and the WDE was going to help Fremont #38. However, the WYR program had already begun operating on September 6, 2011, with still no secure funding source in place. [Exhibit 58, p. 43-44.]

Until a permanent funding source for the program was put in place, WDE funded the program through expenditures from other WDE budgets. Concerns were raised regarding the use of other WDE budgets to fund the Fremont #38 reading program. Budgets were expended for other than their legislatively intended purposes. Much of the other WDE funding required for the WYR program came from utilizing funds from the Statewide System of Support (SSoS) budgets and diverting this funding from other Title 1 Schools in Wyoming. Still other funding came from using other WDE budget categories. None of the spending from these budgets was authorized by the Legislature.<sup>26</sup>

Superintendent Hill and her leadership team took the lead in directing WDE staff to assist Fremont #38 in submitting a new SIG application to fund the WYR program. On September 27, 2011, Joy Mockelmann and Roy Hoyle, of the SSoS, were driving to Greybull. They were directed by Superintendent Hill and others to drop everything else and, to the exclusion of other school districts, report to Fremont #38 and assist with preparing a SIG application for Fremont #38. [Exhibit 54, p.7; Exhibit 45, p. 2.] They were directed not to leave Fremont #38 until the grant was submitted. [Exhibit 54, p.6.] With Superintendent Hill looking over her shoulder, Joy Mockelmann completed the Fremont #38 application. [Exhibit 54, pp. 7-8.]

An initial Fremont #38 grant application was submitted via the WDE Grant Management System on September 29, 2011. [Exhibit 58, pp. 49-126.] The grant application requested a total

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<sup>25</sup> SIG is a 3 year grant, totaling \$15 million for the state of Wyoming. The grant can be spread out over 15 schools. The idea behind the grant is to implement changes in the school's structure to implement drastic, sometimes wholesale change to improve student performance. [Exhibit 50.] It is also referred to as 1003(g) grants [Exhibit 50.] It was funded by the Stimulus Act.

<sup>26</sup> See Appendix II to this Report.

award of \$1,965,280.00, with \$1,615,280.00 dedicated to implement WYR at Fremont #38. [Exhibit 58, pp. 90-94.]

On December 8, 2011, an amended final SIG Application from Fremont #38 was submitted over the WDE Grant Management System. [Exhibit 58, pp. 127-203] The grant requested a total grant award of \$1,252,640.00. All of the funds in the final grant application were allocated to implement WYR in Fremont #38, despite other stated needs in Fremont #38, such as improving student math skills. This SIG application had an amendment created on December 8, 2011, which states in relevant part, “The application was amended to reallocate funds in accord with the final award amount and to address comments made by WDE as requested.” [Exhibit 58, p. 203.]

Not surprisingly, on December 16, 2011, the School Improvement Grant, which was filled out by WDE personnel, judged by WDE contractors and administered by the WDE was awarded to Fremont #38 to pay for expenses were already incurred implementing WYR. Funds were allocated exactly as in the December 8, 2011 application. [Exhibit 58, pp. 258-263.]

#### **4) WDE Employees Providing Direct Student Instruction in WYR**

Starting in September 2011, WDE personnel and contract employees were dispatched to Fremont #38 to provide direct WYR one-on-one instruction to students at Arapahoe Elementary School. This direct instruction continued through the remainder of 2011. Concerns were raised that the involvement of WDE employees at Fremont #38 came at the expense of other Wyoming school districts.

Superintendent Hill ordered WDE employees and contracted WDE district coaches who worked in the SSoS to provide direct student instruction to students at Fremont #38 for an eight-week period. [Exhibit 54, p. 2.] These employees and contractors received training in WYR via the WEN video network at night, they would work in Arapahoe for a week (four hours in the classroom, four hours conducting their normal job duties in a hotel in Riverton), and then would spend a week back in Cheyenne at their regular jobs. [Exhibit 54, pp. 2, 4-5.] WDE employees received minimal instruction in WYR before beginning to instruct students. [Exhibit 54, p. 5; Exhibit 58, p. 42.] Of the SSoS employees assigned by Superintendent Hill to provide direct student instruction in Fremont #38, only two were certified to teach. [Exhibit 14, pp. 217-218; Exhibit 54, pp. 3-5.]

Title I, Section 1117 of the federal No Child Left Behind Act, clearly states the duties required of the Statewide System of Support to assist schools that are not making adequate yearly progress. Employees of WDE expressed concerns to Superintendent Hill and her leadership team that WYR didn't meet those obligations. [Exhibit 6, p. 52.] Gail Eisenhower describes Superintendent Hill's rejection of advice and the contents of a conversation:

And, you know, she said something to me – [Supt. Hill] said, “You know, I'm glad that you're concerned about this.” She said, “I'm glad that you're concerned



about this because you're diligent," she said, "but I'm not concerned about this." She said, "I can sleep at night." So to answer that question, I would say that for myself, I think that there are many people within the Department and -- that will tell you there were many opportunities where Superintendent Hill and Sheryl Lain and Christine Steele were advised that employees within the Department were not comfortable with the way that some federal funds were being used. And, you know, I would say the feeling among the employees was that Cindy and her team did not want to hear -- they didn't want to hear it or it wouldn't make any difference if you raised an objection or -- or offered some guidance, that -- that wasn't really -- they weren't putting a lot of stock in the advice they were getting from the people who worked there. [Exhibit 6, pp. 137-138.]

## **5) Hiring of Coaches/Tutors to Provide WYR Services**

In addition to SSoS personnel, other individuals were hired on a contract basis to provide one-on-one instruction to Arapahoe Elementary students. These individuals were either WYR coaches, with a background knowledge of WYR, or individuals hired without any previous knowledge of WYR, known as "tutors," "para-professionals," or simply "paras."

As a consequence of the haste in which the program began, tutors, coaches, and teachers were hired very quickly and well before service contracts were executed. [Exhibit 58, pp. 19, 30.] This hasty approach created confusion on whether certain aspects of the program were the responsibility of WDE or Fremont #38. [Exhibit 54, p.2.] Without appropriation, or a budget transfer, and in violation of the law and constitutional provisions placing the appropriation of funds solely in the hands of the Legislature, Jane Brutsman and Joan Brummond were retained as WYR coaches to work on the program. [Exhibit 58, p. 34.] Both instructors began working without a contract in place. [Exhibit 58, pp. 20, 31.] On September 26, 2011, Jane Brutsman signed her contract. She was to be paid \$93,333 for implementing WYR at Arapahoe Elementary School. On September 29, 2011, Joan Brummond signed a contract with identical terms. Victoria Leshar was retained by WDE to provide WYR trainings via the WEN video network.<sup>27</sup> Leshar and Brummond are both connected with the original development of WYR. [Exhibit 11, pp. 430-431.] Both were also awarded contracts in connection with delivering the program to students in Fremont #38. Ms. Brutsman had also been professionally associated with Ms. Lain in the past. [Exhibit 30, p. 2.] All contracts between WDE and Fremont #38 regarding WYR were signed by program co-developer Sheryl Lain. [Exhibit 58, pp. 10-19 & 21-30; Exhibit 19, pp. 1-10.]

Some controversy arose regarding the tutors, including whether they were contract employees of WDE or Fremont #38 School District at the time they were hired, whether they were properly screened and fingerprinted prior to being provided unsupervised access to

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<sup>27</sup> For a complete review of the issues surrounding Victoria Leshar's contracts with WDE, see page 47 of this Report.

students, and whether they were “highly qualified” as required by federal regulations.<sup>28</sup> Before any agreement between Fremont #38 and WDE was finalized or any funding source identified, someone, it is unclear who, hired tutors for the Arapahoe Elementary School to begin the WYR intervention. John Masters, in the MacPherson Report, states that these people were hired by Arapahoe. [Exhibit 54, p. 2.] Tracy Copenhaver, attorney for Fremont #38, stated in his MacPherson interview that it was not clear for whom these people worked. [Exhibit 28, p. 1; Exhibit 58, p. 47.] Gail Eisenhower stated that the tutors were hired by the WDE coaches, Brummond and Brutsmann, as well as Sheryl Lain. [Exhibit 58, p. 45.] Copenhaver stated that Superintendent Hill promised to fund these positions with grant (ARRA) funds which were ultimately not available. [Exhibit 54, p. 2.] Eventually, Copenhaver stated that Superintendent Hill did come through with funds for the program. [Exhibit 54, p. 2.]

## 6) Fremont #38 Discontinues the WYR Program.

A November 2011 article in the Casper Star Tribune pointed out the concerns at Fremont #38 which were ultimately shared with the Legislature – improper use of state money, whether WYR was research-based and vertically aligned, and prescribing a curriculum in an MOU in potential violation of the law and the Constitution.<sup>29</sup>

A meeting was held between Fremont #38 board members and WDE administrators on December 21, 2011, to discuss the implementation of WYR at Fremont #38. Attending the meeting were: Karen Brown (Fremont #38 School Board member), Deb Smith (Fremont #38 employee), Superintendent Hill, Sheryl Lain, John Law, Kevin Lewis and Randy Tucker. [Exhibit 58]. Ms. Brown expressed frustrations with WYR and the cost of tutors. Fremont #38 brought in the “Wilson Reading Program” to assist Special Education students because they were not seeing results with special education students using WYR.

In April 2012, Fremont #38 discontinued the WYR program at Arapahoe Elementary School. [Exhibit 45, pp. 3-4.]

In summer 2012, Fremont #38 invested \$100,000 to purchase a commercially available reading program which met the certification requirements and sought reimbursement from the SIG grant funds for this expenditure. [Exhibit 58, p. 1.]

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<sup>28</sup> According to federal No Child Left Behind (P.L. 107-110) requirements, all K-12 instructional paraprofessionals hired after January 1, 2002 working in a Title I school providing direct student instruction must meet the following requirements:

- High School diploma or GED; and
- An Associate’s degree or higher or
- Completed two years of study (equaling 60 or more credit hours) from an accredited institution of higher education; or
- Obtained a passing score on a State Education Agency approved assessment. (30 CFR 200.58)

<sup>29</sup> See **Wyoming Department of Education Runs Risk of Violating Law with Arapahoe Reading Program**: Casper Star Tribune, November 25, 2011 available at: [http://trib.com/news/state-and-regional/wyoming-department-of-education-runs-risk-of-violating-law-with/article\\_e7f6e52b-8bfd-59ff-8b05-5cb6835160ed.html](http://trib.com/news/state-and-regional/wyoming-department-of-education-runs-risk-of-violating-law-with/article_e7f6e52b-8bfd-59ff-8b05-5cb6835160ed.html)

Ultimately, approximately 130 students received WYR instruction at Fremont #38, at a cost in excess of \$600,000. This number does not include the Statewide System of Support salaries, or the administrative salaries of Victoria Leshner, Joan Brutsman and Joan Brummond, which total approximately \$230,000, or the dollars spent on tutors, teachers and others by Fremont #38.

### **FINDINGS – WDE Involvement with Fremont #38 School District**

The Committee finds that the actions of Superintendent Hill and her leadership team in implementing WYR at Arapahoe Elementary School in the fall of 2011 exceeded the authority of the Superintendent and of WDE under state and federal law and regulations. The Committee agrees with the Superintendent that it is a commendable goal to increase the reading scores of struggling students. The Committee believes that this goal could have, and should have, been accomplished without violating state and federal laws and regulations.

Superintendent Hill and her leadership team ignored the concerns of their own employees who were field experts in federal funding and school district support by instituting WYR at Arapahoe #38 to the detriment of other schools districts. They rushed into Fremont #38 without sufficient planning and without first securing a long-term funding mechanism for the WYR project. Superintendent Hill and her senior leadership team created an environment in which WDE employees had no choice but to perform actions for which they were not properly trained, neglect their own job functions and the needs of other school districts, and provide questionable services to Fremont #38, all in order to promote the implementation of a program with dubious long-term sustainability.<sup>30</sup>

The implementation of WYR at Fremont #38 was clearly viewed by Superintendent Hill and Sheryl Lain as an opportunity to show that their administration could achieve positive results. [Exhibit 50, p. 1.] Superintendent Hill and her leadership team were so intent on implementing WYR at Fremont #38 that they were unresponsive to the true needs of the students and teachers of the District. Superintendent Hill and Lain were so desperate to prove that WYR improved the reading skills of struggling students that they were willing to ignore federal and state regulations, as well as the needs of other districts to achieve their goal. In fact, WYR was not a long-term sustainable solution for the reading challenges faced at Arapahoe Elementary School. The school abandoned the program in Spring 2012, less than 9 months after it was first implemented. While WYR surely improved the reading skills of some individual students, its intensive demands on personnel, and the substantial costs that accompanying those increased demands, along with other issues, doomed its viability at Arapahoe Elementary School.

The WDE could not have impartially evaluated Fremont #38's SIG application because the WDE had a real and established interest in ensuring that Fremont #38 received SIG funding in an amount sufficient to cover the realized and anticipated expenses of the already

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<sup>30</sup> Other Wyoming School Districts which had attempted to implement WYR complained that the program required too much direct student tutoring to be financially viable. See Wyoming Department of Education Runs Risk of Violating Law with Arapahoe Reading Program: Casper Star Tribune, November 25, 2011.

implemented WYR program. This bias towards the Fremont #38 SIG application created an environment where the SIG application almost *had* to be approved.

The Committee finds that Superintendent Hill could have known and should have known that employees directly under her supervision were expending funds for the implementation of WYR at Fremont #38 using WDE departmental budgets in direct contradiction of legislative intent.

The Committee is also concerned that the Wyoming Department of Education mandated, in the terms and conditions of the Agreement with Fremont #38, that the WYR program was the only reading program that could be implemented in Fremont #38. This specification likely violated the constitutional provision prohibiting the Wyoming Superintendent of Public Instruction from specifying curriculum. [Wyoming Constitution Art. 7, Section 11.]

Despite laudable goals, WDE's intervention at Fremont #38 was done without legislative authority and in contravention of state and federal law and regulation. If Superintendent Hill was truly concerned with helping improve the education of the children at Fremont #38, she should have taken the time to study the needs of that school and developed a plan with long-term funding and sustainability. Instead, she attempted to implement a program, developed by her Instructional Leader, with little forethought or planning, that was ultimately not a long-term solution for the reading problems faced by Fremont #38.

**D. FAILURE TO FOLLOW STATUTES AND EXECUTIVE BRANCH REGULATIONS AND LEGISLATIVE DIRECTIVES.**

**1) Obstructing the Implementation of the 2012 Wyoming Accountability in Education Act.**

In 2011, the Legislature passed Senate File 70 which created W.S. § 21-2-204, the "Wyoming Accountability in Education Act" ("WAEA"). Among other things, the Act was intended to create a statewide system of accountability and to connect accountability to student performance measures. The legislation established the Select Committee on Statewide Education Accountability to oversee the implementation of the WAEA and created an advisory committee comprised of public education representatives and others to assist the Select Committee. Implementation of the legally mandated portions of the WAEA required significant cooperation between the WDE, the Superintendent of Public Instruction, the State Board of Education, the Select Committee and various entities retained for their individual expertise. The WAEA was subsequently amended during the 2012 legislative session by 2012 Session Law Ch. 101, which further adjusted the statewide assessment system and refined the assessments used for statewide accountability. The amendment also clarified the duties of the Superintendent, the WDE, the State Board of Education, the Select Committee and the advisory committee.

In addition to modifying and clarifying the WAEA through the passage of 2012 Session Laws Ch. 101, and dissatisfied with the WAEA's implementation, in 2012 the Legislature

approved the hiring of two educational liaisons to measure and promote implementation of the WAEA and 2012 Session Laws Ch. 101. [See 2012 Budget Bill, 2012 Session Laws Ch. 26 §328.] Pursuant to their assigned duties, and to examine the implementation of the WAEA by the WDE, the liaisons issued a report to the members of the Select Committee on Statewide Education Accountability on November 13, 2012. In the report, the liaisons analyzed the duties assigned to each party responsible for implementing the WAEA and 2012 Session Laws Ch. 101, including WDE and Superintendent Hill. Drawing upon significant study and immersion into the issues, the liaisons found and reported a startling number of instances in which WDE, under Superintendent Hill's leadership, failed and even refused to comply with statutory mandates. The liaisons executive summary illustrates the seriousness of their conclusions:

Many requirements and mandates of 2012 Wyo. Sess. Laws, Ch. 101, have not been fully met nor adequately addressed. Attempts to comply with the law frequently fell short of the mandates within statute and the non-codified portions of the law. On occasion the Superintendent of Public Education (Superintendent) and the Wyoming Department of Education (WDE or Department) attempted to perform obligations and duties assigned to the State Board of Education (SBE or Board). In other instances where the Superintendent and the Department were charged with action, they failed to carry out those mandates in a manner compliant with the law. Furthermore, the Board could not perform some statutory tasks due to ineffective or insufficient support (from WDE). There are several explanations for these failures, including lack of capacity and competence related to attrition of key staff, and misunderstanding of, disregard for, or stated opposition to provision of the statute. The details of this report and the supporting documentation herein provide information relevant to this conclusion.

This Committee will not restate all the conclusions of the liaisons. Instead, the Committee strongly suggests that any reader of this Report make an independent review of the liaisons' findings regarding Superintendent Hill and the WDE. The report can be located at <http://legisweb.state.wy.us/InterimCommittee/2012/SEASummaryRptFindings.pdf>. It is useful, however, to highlight several of the liaison's findings in order to convey the magnitude of the neglectful, inattentive and improper conduct uncovered by the liaisons.

As described in detail in the liaison's report, the WAEA and other education statutes mandate that the SBE implement and enforce specific program tasks. Despite these laws, the liaisons found that WDE and the Superintendent improperly assumed work assigned to the SBE. Specifically, the WDE conducted public/educator outreach without discussion or sanction of the SBE. Some of the Superintendent's and WDE's activities significantly conflicted with SBE direction and, consequently, confused the public and school districts, creating skepticism concerning the ability of the SBE or the Superintendent to provide clear leadership.<sup>31</sup> At the same time the Superintendent and WDE were usurping duties from the SBE, they were hindering

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<sup>31</sup> An example of the conflict and confusion was the development of an accountability model by the WDE. The development of such a model was tasked to the SBE by the WAEA. School districts were confused when Superintendent Hill and other WDE personnel presented their accountability model. [Exhibit 74, p.11.]



the SBE's ability to meet its own statutory obligations by failing to produce data, information and research requested by SBE. [Exhibit 74, p.3.] The liaisons cite a number of instances in which WDE, under Superintendent Hill's direction, failed or refused to produce information to the other entities responsible for implementing the WAEA and other education law and dedicated time and resources toward improper or unnecessary work at the expense of accomplishing their own statutorily-required tasks. [Exhibit 74.]

As an example of the failure of WDE to implement the Accountability Act, the WAEA required Superintendent Hill to apply to the United States Department of Education ("USDE") for permission to use the college entrance exam, ACT, rather than Wyoming's PAWS tests, in grade 11 to fulfill requirements related to the federal No Child Left Behind Act of 2001. [Exhibit 74, p. 6.] The liaisons discovered multiple deficiencies in WDE's effort to obtain a waiver for use of the ACT, including:

- 1) The Superintendent engaged in significant delay in applying to the USDE for the requested waiver. The provisions of the WAEA that required adoption of the ACT in lieu of PAWS and required the waiver request became law in early March 2012. The law specifically required the Superintendent to "**immediately** apply to the United States department of education for a waiver . . . ." (emphasis added) Despite the clear urgency of initiating the request, the Superintendent waited until May 9, 2012 to request the waiver from USDE violating her legal obligation to do so immediately.
- 2) When she finally submitted the waiver request, the Superintendent submitted a one page letter with no supporting argument or documentation for the request. The Superintendent inexplicably failed to use Wyoming's historical test administration data in support of a waiver request. Since 2008, Wyoming had administered both the PAWS and ACT assessments to 11<sup>th</sup> grade students. A comparison of two such tests was a necessary step in obtaining a waiver. Further, WDE's attempts to change to a new college entrance exam would have prevented this historical data from being useful. It also would have delayed the availability of any useful data until after the spring 2013 test and would have required administration of the PAWS test in 2013 so as to provide useful comparative information;
- 3) The WDE prepared a request for proposals ("RFP") to open bids for a new readiness assessment exam required under WAEA, rather than simply amending the existing exam contract (for the ACT). The RFP process would significantly slow work on the USDE waiver request and would cause disruption to districts experienced in administering existing ACT assessments;
- 4) By November 2012 the liaisons found "No evidence that work required to obtain USDE approval has been initiated by the WDE." This failure of WDE to seriously seek a waiver for the use of the ACT forced the Legislature to direct its own consultants to file the waiver request with the USDE.



An examination of the WDE's implementation of the requirements of the WAEA reveals a host of other examples where the WDE failed to implement the law or actively sought to undermine educational accountability. By way of example, under the WAEA, the WDE was tasked with providing information and data to the Professional Judgment Panel (PJP) in order to allow them to do their critical work on the accountability model. The WDE's failure to provide information as requested prevented the development of a meaningful pilot model during the 2012 interim.

An independent consultant, Dr. Michael Beck, was retained to facilitate the work of the PJP pursuant to the WAEA. Under the Act, the PJP was to review data provided by WDE and determine cut-scores under the WAEA. The Committee notes that Dr. Beck, as an outside consultant hired to work with all parties to facilitate implementation of the WAEA, was a disinterested third party. Dr. Beck bore witness to the WDE's unwillingness to implement the WAEA. For example, he noted to the Board of Education that the WDE "demonstrated its inattention to your needs and the imminent deadlines. The Dept. has had many, many months to experiment with data and they have essentially done very little." [Exhibit 74,] Speaking again about the Superintendent and her Department's efforts, Dr. Beck noted that "their efforts have been some combination of unprofessional, negligent and obstructionist." [*Id.*]

### **FINDINGS – Obstructing the Wyoming Accountability in Education Act.**

The Superintendent engaged in a systematic effort to delay implementation of the WAEA. Following the 2012 legislative session the State Board of Education attempted to hire needed consultants to perform their work under the Act. The WDE, under the Superintendent's guidance, failed to approve the consultants' contracts until six months after the Act became law. The SBE liaison complained to the Select Committee on Statewide Educational Accountability that the board could not do its work because the WDE was uncooperative. The Legislature's consultants, the National Center for Testing and Assessment, reached a similar conclusion, noting to the Select Committee that implementation of the Act was hindered by obstruction within the WDE led by the Superintendent. The Director of the Department of Enterprise Technology Systems reported to the Select Committee noting that the WDE was not timely or cooperative in their responses to numerous requests for information. In short, most parties with a meaningful role in implementing the WAEA reported that obstacles to the implementation of the Act were caused by the Superintendent and the WDE under her leadership.

The question then remains whether the interference with implementation of the Act was the result of incompetence and inadvertence or whether it was more calculated. Sworn testimony before this Committee confirmed that the Superintendent's conduct constituted intentional acts meant to undermine the Act. Witnesses testified that Hill had indicated that she would do everything she could to thwart external accountability as prescribed by the Legislature. [Exhibit 14, pp. 228-229.] Witnesses also testified that Hill regularly spoke against external accountability as embodied in the WAEA and the concept of accountability adopted into law by the Legislature.

The Committee finds that rather than seeking to implement the WAEA with fidelity, the Superintendent violated her obligations under the Act and sought to thwart the accountability measures that were central to the Act.

## 2) Hiring Persons as At-Will Employees without Authority

The Committee investigated the issue of Superintendent Hill reassigning permanent classified positions at the WDE into “at-will” positions. Some background information is appropriate to fully understand this issue.

Most employees in the executive branch of Wyoming State Government are classified as permanent employees. That is, after they complete a probationary period (usually 12 months) an employee can only be terminated from their position for cause as described in the State Personnel Rules promulgated by the Human Resources Division of the Department of Administration and Information. A classified permanent employee has a property right in his continued employment of which he can only be deprived after receiving the process proscribed by law and the Personnel Rules. [Exhibit 72.]<sup>32</sup>

An employee in an “at-will” position, on the other hand, has no property right in his continued employment. An at-will employee may be terminated from his position for any lawful reason<sup>33</sup> or for no reason at all. Therefore no procedural protections are required before or subsequent to the termination of his employment. Currently, most of the at-will employees in the service of the State are agency directors, appointed directly by the Governor, agency division administrators, who serve directly under the agency directors, the deputies or administrators in the offices of the five statewide elected officials, and attorneys employed by the State.

There are a number of reasons why the State of Wyoming has long considered it a good policy to classify the vast majority of state employees as permanent employees.<sup>34</sup> As the Wyoming Supreme Court has recognized, one reason is that in exchange for an employee’s job security, the State receives an “orderly, cooperative and loyal workforce”. [*Brodie v. Gen. Chem. Corp.*, 934 P.2d 1263, 1265 (Wyo. 1997).] While this is certainly true for the State of Wyoming, as it is for a private employer who offers permanent employment, it is probably not the driving factor in favor of public service permanent employment. A State employee who is classified cannot be dismissed and replaced by a political supporter, donor, friend or relative of the new administration. The benefits of this system are at least twofold: first, state jobs do not

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<sup>32</sup> This is not to say that a permanent employee cannot be terminated by the State of Wyoming. Permanent State employees can certainly be fired for numerous reasons including, but not limited to “(i) absenteeism...(iv) carelessness...(vi) dishonesty; (vii) insubordination; (viii) misconduct...(x) sexual harassment...(xii) unsatisfactory work performance...(xviii) violation of the State of Wyoming Anti-Discrimination Policy.” [Exhibit 72.]

<sup>33</sup> An at-will employee may not be terminated because of the exercise of a constitutional right (freedom of speech, religion, etc.) or because the employee is a member of a class which has been historically discriminated against, or if they exercised a right conferred by law, such as filing a worker's compensation claim.

<sup>34</sup> The State of Wyoming has followed the policy of a majority of its employees being permanent employees since at least 1958. [See Wyoming Attorney General, Formal Opinion, 2011-002, p. 5 (citing Wyoming Personnel Commission Rules, Rule I: Definitions, at p.5 (1958).]

become part of the “spoils system” whereby political favors performed during a campaign are rewarded with employment; and second, the citizens of the State of Wyoming receive superior service from their public servants because qualified State employees retain their jobs across successive administrations, despite party affiliation or candidate support.

During the first half of 2011, Superintendent Hill made it well-known that she believed all employees in the Department should be classified as at-will employees so that they could be terminated without cause and with no prior notice. [Exhibit 10, p. 705.] She also believed that, as Superintendent of Public Instruction, she had the authority to reclassify vacant classified positions as at-will positions. The Superintendent acted on this perceived authority despite the State Personnel Rules providing the Human Resources Division of A&I with the sole authority to determine the employment status of a position. Further, Superintendent Hill did not limit this approach to only those hired in management or professional positions. For a period of time in 2011, Superintendent Hill required every new employee at WDE, including clerical and support staff, to sign at-will letters.

The Wyoming Constitution provides that the executive power of the state resides in the Governor. [Wyoming Constitution, Article 4, Section 1.] Employees of WDE are employed within the executive branch.<sup>35</sup> In creating the Department of Administration and Information, the Legislature determined that the law should “be construed to provide the **governor**, through [A&I], **with a more coordinated and responsive system of management of the executive branch of state government.**” [W.S. § 9-2-1002(c).]

In creating and implementing this more responsive system of management of the executive branch, the Legislature authorized A&I, again working at the behest of the Governor, to establish and administer a classification plan covering all executive branch employees into categories of positions and to establish a State compensation plan. [W.S. § 9-2-1022(a)(i) & (ii).] In this same statutory section, the Legislature further required A&I approval before implementation of all executive branch “changes related to personnel with respect to compensation, position classification, transfers, job titles, position specifications and leave time” and “grievances and terminations.” [W.S. § 9-2-1022(a)(viii) & (ix).]

In carrying out this statutory directive, the Human Resource Division has promulgated a rule capturing the essence of the Division’s legal authority to set the terms of employment for specific executive branch positions: “**The Human Resource Division has sole authority to classify and reclassify positions.**” [Exhibit 72.]

However, an agency head (such as the Superintendent of Public Instruction) may petition A&I for a position reclassification. Such a reclassification will be granted by A&I if the agency head submits “appropriate written justification.” [Exhibit 72, p. 4.] In determining whether the

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<sup>35</sup> There are only three branches of Wyoming State Government: Executive, Legislative and Judicial. (Wyo. State Constitution, Article 2, Section 1). As the Legislature determined in the Act creating and assigning duties to A&I, “ ‘Agency’ means an office, department, board, commission or operating unit of the executive branch of state government” (W.S. 9-2-1002(a)(i)).

position should appropriately be reclassified as an at-will position, the Human Resource Administrator shall consider the following requirements for the position: “formal training, experience, management control, supervisory skills, human relations skills, responsibility, accountability, problem solving, complexity, working conditions, and mental/visual demand.” [Exhibit 72, p. 5.] Superintendent Hill was aware of this mechanism to reclassify positions and in fact received A&I approval to reclassify the WDE Human Resource Manager from a permanent position to an at-will position. [Exhibit 60.]

Despite a lack of legal authority, and while exercising the ability to petition to have a position reclassified, Superintendent Hill still believed she should be able to reclassify other positions in WDE. On July 5, 2011, Superintendent Hill requested a Wyoming Attorney General’s Opinion on this issue. The Superintendent posed this question to then Attorney General Greg Phillips:

Does state law require that an elected official receive approval from the Department of Administration and Information before hiring an employee “at will” to fill a position that was previously held by a “permanent” employee?

For the reasons stated above, Attorney General Phillips in a formal opinion issued on August 25, 2011, stated unequivocally that Superintendent Hill did not have the authority to reclassify positions in the WDE. [Exhibit 76.]<sup>36</sup> Surprisingly however, Superintendent Hill did not wait for this requested Opinion to be issued before deciding unilaterally that she could reclassify positions on her own. In fact, Superintendent Hill required new employees to sign at-will letters *after the Attorney General opinion was issued concluding she lacked authority to do so*.<sup>37</sup> All of these positions were eventually converted back to permanent status.

### **FINDINGS – Conversion of Positions to At-Will**

The Committee finds that the actions of the Superintendent in hiring employees as at-will in previously classified positions was done without legal authority. Superintendent Hill testified before the Committee that she familiarized herself with the Wyoming State Personnel Rules.

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<sup>36</sup> Attorney General Phillips found:

The law prescribes to the Superintendent of Public Instruction “[t]he general supervision of the public schools” and names her as “the administrative head and chief executive officer of the department of education.” WYO. STAT. § 21-2-201 (2011). The statutes empower the Superintendent in many ways and also prescribe numerous duties. WYO. STAT. §§ 21-2-202; 21-2-203 (2011). **But nothing in these grants of authority includes a power to determine the employment status of positions.** [Exhibit 76.]

<sup>37</sup> See the attached offer letters sent after Superintendent Hill received the Attorney General’s Opinion. By September 22, 2011, it appears that WDE had stopped attempting to reclassify positions as at-will without authorization from A&I. [Exhibit 86.] Though even as late as December, 2011 there was no mention in the WDE standard offer of employment letter that positions were “classified” or “permanent” as compared to “at-will.”

[Exhibit 9, p. 1085.] Yet, the WDE on her watch and at her direction violated these very personnel rules. The Committee finds the action of the Superintendent in disregarding state personnel rules had the high potential to adversely impact WDE. It is very likely that dissent within the WDE would have been severely restricted by the Superintendent's actions. A likely outcome of this would have been a lack of intervention and reporting of some of the many questionable policies undertaken by Superintendent Hill and her leadership team. Such a policy would have ensured complete political and personal loyalty to Superintendent Hill which was a point that she would describe as absolutely necessary time and again.<sup>38</sup>

Finally, the Committee questions Superintendent Hill's memory on offering at-will employment to persons applying for permanent positions lapsed in front of the Committee:

Q. [BY SALZBURG] After [the Attorney General's] opinion was issued, did you continue to hire people into classified permanent positions and require that they execute agreements accepting at-will employment?

A. [BY HILL] No.<sup>39</sup>

The Committee finds this testimony of Superintendent Hill to be inconsistent with the relevant evidence. First, it is clear from documentary evidence provided by WDE that in fact numerous employees were offered at-will positions in the WDE without authority from A&I. Second, Superintendent Hill had access to this information as the agency head. Third, the Superintendent heard multiple witnesses testify that either they or other WDE employees were offered unauthorized at-will positions (which were later converted back to permanent positions) or that they uncovered evidence of this practice. [Exhibit 10, pp. 705-707; Exhibit 2, p. 837.] Finally, Superintendent Hill requested that the Department of Family Services HR Manager, Angela Benner, conduct an investigation into complaints raised by a former WDE employee concerning conditions within the Department. [Exhibit 16, pp. 1-2.] Ms. Benner's report to Superintendent Hill's Legal Counsel, John Masters, clearly found that WDE violated the State Personnel Rules by requiring personnel hired into classified positions to sign at-will letters. [Exhibit 87; Exhibit 2, p. 837.] Either the Superintendent did not review this report which she requested or she was willfully ignorant of the report in an attempt to create some sort of "plausible deniability" concerning the contents of the report.

With all of these opportunities to be informed of the illegal at-will hiring that took place at the WDE, the Committee finds that it is not credible that Superintendent Hill did not know and authorize this practice. As the Superintendent herself admitted, as the agency head of WDE, she was responsible to ensure compliance with the State Personnel Rules within the Department. [Exhibit 9, pp. 1085-1086.] The Committee finds that Superintendent Hill intentionally and knowingly violated the law by requiring personnel to sign at-will letters when they were hired in

<sup>38</sup> See the Political and Personal Loyalty Section of this Report, starting on page 68.

<sup>39</sup> [Exhibit 9, p. 1084]



permanent positions. The Committee finds that Superintendent Hill undertook this policy to ensure and promote personal and political loyalty within the Wyoming Department of Education.

### 3) **Demands By Superintendent Hill for Political and Personal Loyalty**

As early as 2011, disturbing accounts of the management style of Superintendent Hill and her leadership team at the Wyoming Department of Education were reported to members of the Legislature. After the issuance of the MacPherson Report and during this Committee's investigation, many more allegations and instances of a management style which is best described as odd, erratic and troubling have come to light.

Wyoming Statutes prohibit demands for political loyalty from civil servant employees. Wyoming Statute § 9-13-105, entitled "Misuse of office," provides that a public official, public member or public employee shall not use public funds, time, personnel, facilities or equipment for his private benefit or that of another unless the use is authorized by law. Additionally, the statute provides that a public official, public member or public employee shall not use public funds, time, personnel, facilities or equipment for political or campaign activity unless the use is authorized by law or properly incidental to another activity required or authorized by law and the public official, public employee or public member allocates and reimburses the governmental entity for any additional costs incurred for that portion of the activity not required or authorized by law. Violation of this statute constitutes grounds for removal from office. [See W.S. § 9-13-109(b).] While an elected official can direct programs and policies, the elected official, as a condition of employment, cannot demand absolute political loyalty.

More importantly, the First Amendment to the United States Constitution protects a person's right of free speech and political affiliation. To demand political loyalty is a violation of the United States Constitution. In *Gann v. Cline*, 519 F.3d 1090 (10th Cir. 2008), the Tenth Circuit Court of Appeals held that demanding political loyalty in a non-political position was a violation of the First Amendment to the Constitution.

Wyoming's Constitution contains similar provisions. Article 1, Section 20 of the Wyoming Constitution provides the right of free speech:

Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right; and in all trials for libel, both civil and criminal, the truth, when published with good intent and [for] justifiable ends, shall be a sufficient defense, the jury having the right to determine the facts and the law, under direction of the court.

Citizens, even public employees, have the right to freely speak on any political issue – that right being protected by the Wyoming Constitution.



Additionally, the Wyoming Constitution provides that all citizens, even public employees, have the right to make their opinions known, and that government should never deny or abridge that right. Article 1 Section 21 provides:

The right of petition, and of the people peaceably to assemble to consult for the common good, and to make known their opinions, shall never be denied or abridged.

Finally, the Wyoming Constitution claims that no power, civil or military, shall at any time interfere with an election or the right of a voter, whether a public employee or not, to exercise their right to vote. Commensurate with that right is the right not to be punished for vote or political support after the vote is made. Article 1, Section 27 of the Wyoming Constitution provides that elections should be free and equal.

Elections shall be open, free and equal, and no power, civil or military, shall at any time interfere to prevent an untrammelled exercise of the right of suffrage.

This demand for personal loyalty from the employees of the Department of Education began in the Superintendent's first week in office. Despite the clear constitutional and statutory provisions to the contrary, Superintendent Hill demanded political loyalty from the civil servants who worked for the Wyoming Department of Education.

Superintendent Hill constantly demanded personal loyalty from WDE employees, who were not hired as political appointees, but as civil servants whose loyalties should run to the Department, not to the individual elected as the state superintendent. The Superintendent was free to bring in her own leadership team and to develop her own policies within the scope of her authority, but to the extent she stigmatized employees as disgruntled because she had replaced the former superintendent, Superintendent Hill inappropriately politicized the WDE.

The Superintendent asserts that she was faced with disgruntled employees who were angry she had defeated their boss. This assertion, however, is not borne out by the testimony. The Committee heard testimony from several new WDE employees, some of whom were hired to be part of Superintendent Hill's leadership team. [Exhibit 4, p. 770; Exhibit 6, p. 26.] At least one employee stated she had supported Ms. Hill's election. [Exhibit 14, p. 226.] One had served as a member of Superintendent Hill's transitional team before becoming disillusioned by Superintendent Hill's failure to heed the advice and warnings of her staff.

Testimony and written statements from WDE employees chronicle numerous examples of odd, inconsistent, and erratic behavior by Superintendent Hill towards employees. Because of this strange and troubling behavior on the part of the Superintendent, whether the employees were new or long-time state employees, they testified as to the difficult work environment under Superintendent Hill. [Exhibit 6, pp. 38-39; Exhibit 5, pp. 323-324; Exhibit 10, pp. 700, 704; Exhibit 15, pp. 976-977; Exhibit 25, pp. 1-2; Exhibit 43, p. 1; Exhibit 44, p. 1; Exhibit 46, p. 1; Exhibit 52, p. 1.]

Superintendent Hill was suspicious of any WDE employee who continued to associate with former Superintendent Jim McBride, even if this association was restricted to saying hello to Mr. McBride in passing. After either witnessing or being told that a WDE employee was talking with Mr. McBride, Superintendent Hill would demand to know what they had been discussing.

One WDE employee summarized his concerns about Superintendent Hill's demands for loyalty from Wyoming civil servants, "You have to have been around Cindy. Everything is about loyalty. No one is allowed to say anything that might be critical of Cindy." Superintendent Hill set the tone for her loyalty demands early in her administration, when upon holding her first department-wide meeting on January 5, 2011, she asked all WDE employees whether they were "willing to honor the new superintendent's leadership." [Exhibit 15, pp. 948-949; Exhibit 9, pp. 1005-1006.] Following are specific allegations and findings concerning Superintendent Hill's demands for personal and political loyalty.

a) Firing of a WDE Employee for Alleged Comments about Superintendent Hill

The Committee received testimony concerning the ordered firing of a probationary employee by Superintendent Hill because of comments this employee was alleged to have made about the Superintendent to members of the community in Wheatland.<sup>40</sup> Per the testimony received by the Committee, Superintendent Hill was upset about two comments made by the probationary employee, both centered on the use of the state plane. In January 2012, the probationary employee made his first trip on the state plane as a member of WDE to a meeting in Gillette. Upon entering the plane and finding that the only open seat was in the rear of the plane, the employee stated something to the effect of "low man on the totem pole has to sit in the back of the plane." Superintendent Hill apparently found this comment to be disrespectful. Then, the probationary employee and another WDE employee who had flown on the state plane to Gillette were ordered to drive back to Cheyenne, rather than fly. Two members of Superintendent Hill's leadership team had driven to Gillette. Apparently, these members of the leadership team were tired and took the seats of the probationary employee and the other WDE employee on the plane, with the result being that the two bumped employees had to drive the leadership team members' state car back to Cheyenne. Upon returning to Cheyenne, Superintendent Hill directed the probationary employee's direct supervisor to verbally reprimand the probationary employee for his "low man on the totem pole" comment.

At some point in time, the probationary employee told a person or persons in Wheatland about being ordered to drive home from Gillette after flying there on the state plane. These comments were relayed to Superintendent Hill almost eight months after the incident involving the state plane. Superintendent Hill again took this as the probationary employee being

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<sup>40</sup> The testimony on this incident was received in executive session by the Committee. The Committee will therefore protect the identity of the probationary employee whose dismissal was ordered by Superintendent Hill. This incident was also reported to the MacPherson Team.

disrespectful and found his comments embarrassing. As a direct result of these comments being relayed to her, Superintendent Hill called the cellphone of the probationary employee's direct supervisor on a Saturday to complain about these comments. She ordered the direct supervisor to meet with her early the following Monday morning.

At the Monday morning meeting, Superintendent Hill and at least one member of her leadership team intimidated the probationary employee's direct supervisor into writing and signing a letter providing work-related rationales for the discharge of the probationary employee unrelated to the state plane comments. The probationary employee's direct supervisor did not agree that the employee should be terminated from his position with WDE, even going so far as to call the dismissal "human sacrifice." However, the direct supervisor complied with this order because he felt that it was a test of *his* loyalty to Superintendent Hill and that *his* job might be threatened if he refused to dismiss the employee.

### **FINDINGS – Firing of WDE Employee for Comments about Superintendent Hill**

The Committee finds that the incident of firing of the probationary employee was an attempt by Superintendent Hill to ensure political and personal loyalty in the WDE staff. The Committee received testimony that, while not perfect, the probationary employee was competent at his job and his direct supervisor enjoyed working with him. The probationary employee was employed at least eight months, during which time he received training and learned important job skills. Superintendent Hill was willing to sacrifice the acquired knowledge of the probationary employee because of perceived personal slights. This sort of petty and vindictive behavior not only sowed seeds of distrust towards leadership among the remaining WDE employees, but also hampered the ability of WDE to perform its assigned duties.

The Committee also finds it telling and disturbing that Superintendent Hill and members of her leadership team felt the need to concoct a "cover story" for the dismissal of the probationary employee. This is a clear indication that Superintendent Hill knew that the dismissal of the employee for comments he made outside of his employment could give rise to a wrongful termination claim.

#### **b) Filming Body Language of Employees**

The Committee received testimony and other evidence of the practice of filming WDE employees participating in public meetings. Those recordings were then reviewed by WDE leadership to determine whether the body language of the employees displayed support for or opposition to Superintendent Hill and her policies.

A member of Superintendent Hill's leadership team, Kevin Lewis, had what was referred to as a "360 degree camera," which he used to film WDE employees in public on at least two occasions. Though apparently having no formal training in the field of kinesiology, Mr. Lewis and Superintendent Hill on multiple occasions questioned the loyalty of WDE employees based on the employee's body language.

The first incident involved WDE employee Dianne Frazier. In May 2011, Ms. Frazier accompanied Superintendent Hill and other members of the WDE leadership team to Sheridan County to tour schools. Mr. Lewis brought his “360 degree camera” and recorded the events in Sheridan. [Exhibit 6, pp. 39-40.] Superintendent Hill instructed Ms. Frazier’s direct supervisor, Gail Eisenhower, to review the recording. Superintendent Hill told Ms. Eisenhower that she had reviewed the recording and determined that the recording showed Ms. Frazier was “not on board”. Ms. Eisenhower disagreed with this assessment and stated that Ms. Frazier was a dedicated employee. [Exhibit 6, pp. 40-41.]

Next, Roger Clark, who at the time was an “Instructional Leader” at WDE, was filmed by Mr. Lewis and his “360 degree camera” at a Legislative Select Accountability Committee meeting in Casper in June 2011. Supposedly, the recording of this meeting showed that when Senator Coe and Representative Teeters were “attacking” Superintendent Hill, Roger Clark leaned back in his chair. That supposedly showed that Mr. Clark did not support Superintendent Hill. [Exhibit 4, pp. 776-778.]

Mr. Clark was confronted by Mr. Lewis on the issue of his body language during a WDE leadership meeting in which Mr. Clark participated via videoconference from Riverton. Superintendent Hill initiated the meeting with the statement that she had to leave, but she hoped everyone could “do the right thing.” Shortly after Superintendent Hill left the meeting, Mr. Lewis accused Mr. Clark of exhibiting body language which showed a lack of support for the Superintendent. Mr. Clark became incensed at this accusation, and tendered his resignation the following day. [Exhibit 4, pp. 775-781.]

### **FINDINGS – Filming of WDE Employees**

The Committee finds that filming and reviewing body language of public employees to determine whether they were sufficiently on board with Superintendent Hill’s policies was intended to intimidate WDE employees and is unacceptable treatment of the public employees of Wyoming. Whether or not Superintendent Hill requested these evaluations is not material. They occurred under her watch and there is no indication she disapproved of the process.

#### **c) Forced Retirement of WDE Employee who Superintendent Hill Perceived as Critical of Her**

Early in the Hill administration, on March 7, 2011, a WDE employee with considerable experience in education was so marginalized by Superintendent Hill and her leadership team that the only conceivable option left open to him was retirement.<sup>41</sup> This occurred because the employee was overheard by Jerry Zellars, a member of the Hill leadership team, holding a

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<sup>41</sup> The testimony on this incident was received in executive session by the Committee. The Committee will therefore protect the identity of the retired employee. This incident was also reported to the MacPherson Team.

conversation with another WDE employee questioning whether Superintendent Hill was going to be “an innovator.” [Exhibit 15, p. 955.]

Due to this one statement, the employee and his direct supervisor were brought into a meeting with Superintendent Hill and Zellars. The Committee received testimony that the meeting lasted approximately 70 minutes. Superintendent Hill reported to the employee that she knew Zellars was “loyal” to her and that she did not trust the employee. When the employee tried to explain the offending comment, Hill told him she didn’t want to “wordsmith” with the employee. Roger Clark, WDE Instructional Leader, then entered the room and the whole story was repeated for Clark’s benefit.

The employee’s direct supervisor attempted to intervene on his behalf. She suggested asking the employee who was the other half of the conversation how he understood the comment. Hill stated that she did not have any interest in hearing another point of view.

The employee was demeaned and deflated by the entire episode. As a result, the employee was put in a position where his continuing employment at WDE would be extremely uncomfortable for him. He was left with no other constructive option but to resign. The employee announced his resignation the very next day.

#### **FINDINGS – Forced Retirement of WDE Employee**

With the resignation of the employee discussed above, the WDE lost a vast amount of institutional knowledge, the State lost a valued public servant, and the remaining WDE employees learned they had better not question Superintendent Hill. Superintendent Hill had effectively silenced dissent within the WDE and assured personal loyalty to her within the Department by vindictively capitalizing on a benign comment about an employee’s hopes for the future of the Department, overheard by the WDE Press Secretary.

##### **d) Meeting on January 22, 2012**

The Committee received a report concerning a meeting at the WDE on Sunday, January 22, 2012. Hill required all of the division administrators to attend a meeting to work on budgets. This followed a contentious hearing before the JAC earlier in the month. JAC had directed WDE to return to the JAC for an additional hearing on January 23, and to have more specific responses to questions, primarily related to the T2T program.

At the outset of the meeting, Superintendent Hill asked who was “with her” and who was “against her.” Anyone who was against her could leave. Superintendent Hill and John Masters were seated at a table in the middle of a large U-shape of other tables. First to respond was Paul Williams, Acting Director of Assessment. Williams reportedly pledged his loyalty and support for Superintendent Hill. Second to respond was Jerry Zellars, WDE Press Secretary, who commented to the effect that he was not comfortable with the direction of the meeting. Hill became very angry and there was a tense back-and-forth between her and Zellars.

Superintendent Hill came out of her chair and got close to Zellars' face as they argued. The dispute culminated with Superintendent Hill telling Zellars that she would have the last word on the matter, and he was not to say anything else. Zellars kept quiet. [Exhibit 53, p. 1.]

### **FINDINGS – Meeting on January 22, 2012**

The meeting on January 22, 2012 provides yet another example of Superintendent Hill mistreating her employees and demanding personal loyalty. Superintendent Hill's actions as the agency director of WDE, including her policy of marginalizing any dissenting opinions within the Department, have resulted in a high rate of turnover among WDE personnel, fear and a steeply reduced level of job satisfaction for those employees who remained at WDE. Superintendent Hill demanded personal loyalty from employees at WDE and alienated and ostracized those employees who were not perceived as loyal to her. She promoted a climate of fear and intimidation at the Department which created a toxic work environment and sowed distrust throughout the ranks of the Department

#### **e) Superintendent's Demand for Loyalty and Belief in Conspiracy Theories**

From testimony the Committee received in January of 2014, and from reports the Committee received, it is apparent that Superintendent Hill believes that there are multiple plots against her and some sort of plan to thwart her educational agenda. It appears that the groups Superintendent Hill believes are plotting against her includes former WDE employees, the Governor and legislators.

Testimony provided by Superintendent Hill, demonstrates her belief that there were plots against her and shows that she began questioning the loyalty of WDE employees before she took office:

Q. [BY SALZBURG] Okay. What did you mean by honor the new superintendent's leadership?

A. [BY HILL] Mr. Salzburg, when I was elected in January or November of 2000 -- or 2010, I believe it was November 3rd, I entered the Department of Education that next day and I was -- I had spoken with Jim McBride. He had called me. I missed his call. So I went over to the Department to meet with him.

Once I was on the second floor, I began interacting with various staff members, and from that moment forward throughout the transition I experienced a less than respective -- or excuse me, less than respectful response. People had a difficult time making eye contact with me for months as I would walk down the halls. I learned later from leadership, the directors who were there, two of them told me they had been told through that period not to engage



me. I would say good morning to people, and they would look down and would not engage, and so I knew pretty quickly after a few days of being on the floor that people were not comfortable with maybe what had happened.

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The leadership, for example, at times some of the staff members who I had hired on as leaders were sometimes treated disrespectfully by other staff members within the Department. We'd have to talk about those things in private if you wanted to know names and incidences, but curt conversations, unwillingness to sit down and meet with people. I experienced it and my leadership team experienced it. [Exhibit 9, pp. 1007-1008.]

In furtherance of her theory that there was a conspiracy against her, Superintendent Hill prepared several lines of questions to be asked of witnesses testifying before the Committee concerning whether they were encouraged by several former WDE employees to either testify before the Committee or cooperate with the MacPherson Investigation. [Exhibit 12, p. 176; Exhibit 14, p. 12.] According to Superintendent Hill, these former (and some current) WDE employees were so upset that Superintendent Hill defeated Jim McBride that they were willing to go to great lengths, including jeopardizing their employment, to ensure that Cindy Hill failed as Superintendent of Public Instruction. [Exhibit 10, p. 766.] Superintendent Hill's distrust was so great that she questioned the loyalty of WDE employees who spoke with Jim McBride or other State officials she perceived as not being friendly to her administration. [Exhibit 13, p. 921.] Superintendent Hill also believed there was a concerted effort on the part of other State officials to encourage employees to leave WDE. [Exhibit 9, p. 1015.] She also believed that the high turnover during her first two years in office was due to "disgruntled employees" not happy about the change in philosophy at the WDE and that there was an active effort to encourage people to leave WDE.<sup>42</sup> [Exhibit 9, p. 1015.] Hill testified as such before the Committee:

A. [HILL] I think the change in philosophy for the Department was significant, and I also believe that there was an effort to encourage other -- encourage people from the Department to leave the Department as well.

Mr. Salzburg, I'm going to expound upon that. I spoke to the governor about this early on in 2011 in the probably four or five months into my office. There were a number of people who had gone to the Governor's Office to serve and other state agencies.

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<sup>42</sup> Hill chose to ignore the pleas of her Instructional Leader, Roger Clark, that her actions had resulted in poor morale of employees at the WDE. Clark told Superintendent Hill that she did not have the support of the rank and file at WDE for the atmosphere or initiative of her administration. Clark told Superintendent Hill that her actions created the inordinate rate of attrition at WDE. [Exhibit 4, pp. 781-782, 813.]

And I teased Governor Mead after we had a meeting. I teased him and said that he could let Mary Kay Hill know that she had forgotten a few, and he laughed out loud. He did. He laughed out loud.

He said to me which employee was the most important, or something along those lines, which one was an employee that you - let me think about this. It was something about what employee did I value the most of those when I walked in, and I said, "Rita Watson," and he looked at me, Mr. Salzburg, and he said, "But she wouldn't leave. She's too loyal to you." And I looked at him, and I said, "You wouldn't know that unless you asked." And at that moment we just closed our meeting. [Exhibit 9, p. 1016.]

### **FINDINGS - Superintendent's Demand for Loyalty and Belief in Conspiracy Theories**

At the beginning of her administration, WDE employees exhibited the same hesitations and fears brought on by any change in leadership. However, time and again WDE employees stated to the Committee that they wanted to support the initiatives of the WDE leadership, but they wanted to ensure that they did so in accordance with federal and state requirements. [Exhibit 8, p. 371; Exhibit 6, p. 44.] The Committee also finds that Superintendent Hill's judgment of her employees and other State officials was clouded by her misperception that plots were being hatched against her. This misperception greatly impaired her ability to effectively manage the Department and also to interact with other members of the executive and the legislative branch.

#### **f) November 19, 2012 Meeting and January 23, 2013 Follow-Up Interviews**

In the immediate aftermath of the Liaison's report criticizing the WDE's handling of accountability, Superintendent Hill made a number of decisions that further destabilized WDE as she increased her demands for political loyalty.

On November 19, 2012, the Educational Liaisons gave their report to the Select Committee on Education Accountability. The report made a number of findings indicating that WDE was not adequately pursuing and meeting accountability standards established by the Legislature.<sup>43</sup> The report apparently concerned Superintendent Hill. For example, various interviews from the MacPherson Report reveal that, during an office birthday party on November 19<sup>th</sup>, the Superintendent slashed a cake knife through the air and declared "we will not be bullied by the Legislature." [Exhibit 54, pp. 9-10; Exhibit 26, p. 3; Exhibit 27, p.2.] On that same day, Superintendent Hill also called new employees into a hastily assembled meeting in which they discussed the report.

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<sup>43</sup> For the background on accountability and a full discussion of the Education Liaison's report, see the WAEA section of this Report, starting on page 60.

At the meeting called by Superintendent Hill, she explained her education initiatives to new department employees and showed them several education-related videos. Superintendent Hill also discussed accountability issues and declared that the new Legislative Education Liaison's report, which addressed accountability, was untrue. [Exhibit 14, pp. 221-223.] Employees report that Superintendent Hill told the group that external accountability was not going to work and that she would not be bullied by the Legislature. [Exhibit 14, pp. 223-224.] At the end of the meeting, the words "external accountability does not work" a likely reference to legislatively mandated accountability standards, were written on the whiteboard in the meeting room. [Exhibit 6, p. 85; Exhibit 14, pp. 223-224; Exhibit 30, p. 4; Exhibit 42, p. 3.]

Superintendent Hill describes the November 19th meeting as an attempt to put new employees at ease after the release of the Legislative Education Liaison's report. She asserts that the impetus behind the meeting was to assure new staff that they could feel confident and comfortable in their positions. [Exhibit 9, p. 1027-1028; Exhibit 37, p. 1.] This Committee believes the meeting was an attempt by Superintendent Hill to pressure employees into supporting her education initiatives, many of which were contrary to legislative direction.

According to employees who attended the meeting, the meeting included demands by Superintendent Hill to demonstrate political loyalty. Employees were asked to do things like stand, step forward and hold hands if they wanted to join the circle of trust, if they were willing to support Superintendent Hill and her work, if they trusted Superintendent Hill and could be trusted and if they trusted Superintendent Hill's leadership team.<sup>44</sup> [Exhibit 14, p. 225; Exhibit 2, p. 848; Exhibit 50, p. 3-4; Exhibit 42, p. 2; Exhibit 23.] After the meeting, employees described the event as very strange and uncomfortable. [Exhibit 2, p. 848; Exhibit 38.] Employees were intimidated and felt they had no choice but to agree with the Superintendent. One employee reported to the MacPherson investigation her feelings that the meeting was an attempt by Hill to use coercion and intimidation to obtain loyalty from employees. [Exhibit 23.] Another employee felt that her job was at stake if she did not participate favorably during the meeting. [Exhibit 14, p. 255.]

Employee Beth VanDeWege was sufficiently disturbed by Superintendent Hill's conduct at the November 19, 2012 meeting that she wrote a letter to members of the Legislature. The letter expressed concern about conditions at WDE. The letter claimed that Superintendent Hill "would do everything she could to thwart attempts to implement external accountability as prescribed by the legislature." [Exhibit 22, p. 1; Exhibit 14, p. 228; Exhibit 50, p. 4; Exhibit 49, p. 1.] By January 22, 2013, the letter had found its way to Superintendent Hill. At that point, things at WDE were deteriorating, the 2013 General Session had convened and Senate File 104 had been introduced. Senate File 104 proposed to remove a number of powers from the Office of Superintendent of Public Instruction. The letter written by Ms. VanDeWege was being circulated through the Legislature in support of Senate File 104 and legislators were considering the appropriateness of the November 19 meeting.

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<sup>44</sup> Superintendent Hill stated in her testimony before the Committee that she asked attendees at the November 19, 2012 meeting to confirm that they 1) were committed to children, 2) would respect everyone who contacted them and 3) would "always honor the leadership." [Exhibit 9, p. 1030.]

Under these conditions, on January 23, 2013, Superintendent Hill decided to contact Steve Corsi, Director of the Department of Family Services (DFS), to see if one of his human resources (HR) employees could come to WDE and interview employees who attended the November 19 meeting. [Exhibit 9, p. 1033.] Angela Benner, the HR Manager for DFS responded to the request and went to WDE's offices. When she arrived, she was directed to Superintendent Hill's office where she found Superintendent Hill visibly upset with a copy of the VanDeWege letter in her hand. [Exhibit 2, pp. 846-847; Exhibit 24, p. 1.] According to Ms. Benner's interview summary from the MacPherson Report, Superintendent Hill described the letter to Ms. Benner and explained that the letter might encourage the passage of Senate File 104, which was being heard that afternoon in the Senate. [Exhibit 24, p. 4.] Ms. Benner agreed to interview employees that afternoon.

Upon returning to WDE to conduct the interviews, Ms. Benner was given a list of employees to interview and was instructed on what questions to ask them. [Exhibit 2, p. 843; Exhibit 24, p. 3-4.] She initially conducted one interview in one office, but then was moved to Superintendent Hill's office to complete the interviews. [Exhibit 2, p. 845; Exhibit 24, p. 4.] Unfortunately, Superintendent Hill's office was not an appropriate place to conduct the interviews. Surprisingly, Superintendent Hill interrupted several interviews by walking into the room. [Exhibit 2, p. 845; Exhibit 24, p. 1; Exhibit 23.] Also, as Ms. Benner later learned, Superintendent Hill and her management team lined up employees in the hall outside the interview room, making them nervously await their turn while leadership team members walked among them and sat in the rooms right next to the interview space. [Exhibit 2, pp. 845-846; Exhibit 23; Exhibit 38, p. 1; Exhibit 41, p. 1 & 3.]

Despite the poor interview conditions created by Superintendent Hill and her staff, Ms. Benner did complete the interviews and took notes which described her observations. Her notes confirm that the November 19, 2012 meeting was uncomfortable for many employees. [Exhibit 57, pp. 4-8.] Employees felt that most of the questions asked at the November meeting were aimed at employee loyalty to the leadership team. [Exhibit 24, pp. 4-5.] More disturbing, however, is Ms. Benner's ultimate conclusion that the real reason she was called to WDE to interview employees was to find information that Superintendent Hill could use to defend herself against Senate File 104. [Exhibit 2, p. 847.] Indeed, Ms. Benner never identified any human resource issue or personnel issue that required her to conduct the interviews. [Exhibit 2, pp. 859-860.] The MacPherson Report quotes Ms. Benner and her conclusion that "she had been used as a pawn and participated in something that wasn't right." [MacPherson Report, Ch. 15, p. 15.] She told the MacPherson Team that the interviews were a "horrible situation." [Exhibit 24, p. 1.] After completing the interviews, Ms. Benner reported to Mr. Corsi, her boss, that she was not comfortable with the outcome of the interviews. [Exhibit 2, pp. 857-858; Exhibit 24, p. 5.] This evidence stands in stark contrast to Superintendent Hill's characterization of the interview process as simply an effort to "understand what the perceptions were of those who attended the [November 19<sup>th</sup>] meeting." [Exhibit 9, p. 1035.]

Not unlike the November 19 meeting which offended Ms. VanDeWege and caused her to write to the Legislature, the interviews ordered by Superintendent Hill on January 23, 2013, offended employees to the point where they reported the incident to other officials. After her interview, one employee submitted complaints to WDE's personnel manager explaining that she had been herded into the interview to then be intimidated and given misinformation. [Exhibit 41, p. 3.] Later, that employee met with Dean Fausset, Department of Administration and Information Director, to discuss her concerns and she eventually filed a formal complaint. [Exhibit 57, p. 23.] Another employee called Mr. Fausset to report that WDE employees were being lined up in the hall, awaiting an interview in which they were being told about the letter to the Legislature and asked if they supported Superintendent Hill. [Exhibit 57, p. 23.] A third employee also made a call to Mr. Fausset, reporting concern over the interviews taking place at WDE. [Exhibit 57, p. 23.]

### **FINDINGS – November 19, 2012 Meeting and Follow-Up Interviews**

Superintendent Hill's actions on November 19, 2012 and January 23, 2013, demonstrate the ways in which she chose to manage her staff. The evidence before the Committee indicates that she was not only willing to demand personal allegiance from her employees, but that she was willing to abuse state resources to accomplish this purpose by pulling in human resource personnel from other agencies. While Superintendent Hill's November 19<sup>th</sup> meeting may have had some legitimate purposes, the way in which it was conducted was inappropriate and threatening. Superintendent Hill's insistence that employees stand, step forward and hold hands in support of her initiatives and leadership was misguided, at best, and more likely manipulative. Rather than helping her employees feel secure, her attacks on legislative initiatives and the liaison's report could have only further confused her employees about the mission of the Department. Corraling employees in the hallway while leadership team members swarmed around them and watched them from their offices was inappropriate. Interrupting the interviews could have done nothing but assure that the employees knew that their responses and participation were anything but confidential.

Also disturbing was Superintendent Hill's testimony before the Committee that she did not read the report submitted by Angela Benner after her January 23, 2013 interviews. [Exhibit 9, p. 1101.] It is clear that Superintendent Hill did not ask Angela Benner to conduct these interviews because she was genuinely concerned about how WDE perceived the meeting of November 19, 2012, but as an attempt to provide a counterargument to Ms. VanDeWege's letter. When it became evident through conversations between Ms. Benner and Sam Shumway (WDE Legal Counsel) that most if not all of the other attendees at the November 19, 2012 meeting shared the same perception of the meeting as Ms. VanDeWege, Superintendent Hill lost interest in actually addressing their concerns.

#### **4) Harassment—Discouraging Investigation of WDE Management Member**

The MacPherson Report contained repeated allegations of inappropriate conduct, primarily of a sexual harassing nature against a member of Superintendent Hill's senior



management. The Committee did not have the resources to investigate all of the allegations raised by many employees of the WDE in the MacPherson Report. This is not an indication by the Committee that these allegations were not substantive and worthy of further consideration. As legislators, we have zero tolerance for sexual harassment or any harassment of Wyoming public employees, and it is unfortunate that the complaints were not vetted through the formal state process or this Committee.

The Committee is also concerned by the lack of follow up on the part of Superintendent Hill or, by extension, her leadership team. The Personnel Rules of the State of Wyoming in Chapter 1, Section (c)-(e) place an affirmative duty on the Superintendent to act in accordance with federal Equal Employment Opportunities laws to distribute and discuss equal opportunity and to provide employees access to an EEO coordinator. [Exhibit 72, p.2.] Unfortunately, the Superintendent created an environment that discouraged WDE employees from filing any formal complaints against a member of her senior management. In fact, there is an indication she created somewhat of a double standard for evaluating alleged employee misconduct. If complaints or concerns were expressed regarding her or members of her senior management, she took swift and in some cases, excessive action. In contrast, proven violations of state law or allegations against her senior management were not addressed and did not result in serious discipline, when perhaps the conduct should have resulted in termination. In this climate, it is not surprising that employees were unwilling to risk filing a formal complaint against any member of the senior management.

The toxic environment in the WDE allowed concerns about employee behavior to go unresolved and unreported through proper channels. Superintendent Hill had an affirmative duty to hold her senior management accountable and ensure they were trained appropriately, as many were new to State government. She brought her team into State government and should have taken appropriate steps to ensure they were aware of and followed all policies of the State of Wyoming related to ethics, personnel rules and harassment. As stated elsewhere in this Report, Superintendent Hill's decision to hire an inexperienced and unqualified human resources manager who had personal loyalty to the Superintendent, left employees without recourse within the WDE to address personnel concerns.<sup>45</sup>

The State of Wyoming's Anti-Discrimination Policy is found in Executive Order 2000-4, signed by Governor Geringer. It begins with a broad statement of policy that expresses zero tolerance for discrimination and imposes an obligation on all department heads to ensure allegations of discrimination are investigated:

All reported or suspected incidents of discrimination or harassment shall be promptly and thoroughly investigated. If discrimination or harassment has occurred in violation of this policy, appropriate corrective action shall be taken, including discipline of the offending employee.

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<sup>45</sup> See Fear and Intimidation section of this Report, starting on page 81.



Under the policy, “sexual harassment means unwelcome sexual advances, ... and other verbal or physical conduct of a sexual or gender-based nature when” the conduct creates a hostile or offensive work environment. [Exhibit 73.] The policy does not require the victim to inform the employee that the conduct is offensive in order for the complaint to be actionable. The policy places the burden on management to investigate suspected violations of the policy and does not mandate the victim file a formal complaint, although it does outline a complaint process.

### **FINDINGS – Failure to Investigate WDE Management Member**

Substantial information was presented, through testimony, regarding a member of WDE management who was cited once for multiple violations of the State sexual harassment policy and once for general harassment. Due to the sensitive and personal nature of the allegations, the Committee is not detailing those incidents. Based on the testimony received by the Committee, there is evidence the employee’s inappropriate behavior continued and was not investigated in accordance with state policy. The threatening and hostile atmosphere fostered by the Superintendent, as testified to by many witnesses, made it difficult for employees to file complaints and seek investigations of inappropriate conduct. The Committee finds that the Superintendent failed in her responsibility, as agency head, to ensure that suspected sexual harassment was investigated or to ensure that her senior management was properly trained and enforcing the State’s anti-discrimination policy.

Due to Superintendent Hill’s failure to adequately investigate and address the allegations of harassment by a member of WDE management, the Committee finds that it may possess more evidence and information on these incidents than any other organization. The Committee is compelled to provide this information to the Wyoming Attorney General’s Office in a confidential format for further action as that Office deems appropriate.

#### **5) Fear and Intimidation in the WDE Workplace**

The Committee received reports and testimony that Superintendent Hill created, promoted and tolerated a workplace at WDE rife with fear and intimidation. Employees reported various incidents where they were fearful in the work place or browbeaten and belittled by Superintendent Hill and her leadership team. The Committee believes it is important that some of these specific incidents are discussed in this Report. The Committee believes that no Wyoming State public employee should ever be subject to a work environment in which they are afraid.

As she did with her demands for personal and political loyalty, Superintendent Hill sowed the seeds of fear, intimidation and distrust among the WDE staff at her first Department meeting on January 6, 2011. At this meeting, Superintendent Hill told the staff that some members of her transition team who were coming to work at WDE “would never be illuminated” [Exhibit 9, pp. 1017-1018.] This statement reasonably made WDE employees feel distrust. Why would the new Superintendent not tell them who the members of her transition team were? Were

these people not revealed so they could spy on other employees and report to Superintendent Hill and her leadership team? What would happen to an employee if Superintendent Hill received a report that they were not loyal to her? This “never be illuminated” statement did much to set the tone for Superintendent Hill’s tenure at the WDE; one of fear and distrust of the Superintendent and her leadership team. This is born out in the statement of a WDE employee before the Committee:

Q. Okay. Can you generally describe for the committee the environment in the Department under Superintendent Hill’s leadership team?

A. Yes. It was very -- it was very toxic. It was -- people didn't trust each other. You didn't know who to talk to because you weren't sure who to trust, who you could trust. There were all these concerns about the administration, but you certainly weren't going to say anything to anybody, lest they know the administration, be very tight with them, and you could lose your job. I mean, people were fearful of losing their jobs all the time. We felt like the administration were bullies, and it was extremely uncomfortable. [Exhibit 5, pp. 322-323.]

The opinion of this WDE employee concerning the workplace environment under Superintendent Hill was in no way unique.<sup>46</sup> The MacPherson Team asked most of the WDE

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<sup>46</sup> Testimony on this subject included:

My perception was that it was -- there was a culture of secrecy, that people were very nervous, very fearful about members of the leadership team. There was a feeling that -- there was a feeling that if you crossed one of the members of the leadership team or Superintendent Hill, that there would be retaliation. I know that a lot of people were -- you know, feared for their jobs, and especially people that were new hires, and there were a lot of them, in their first year of probationary period, kind of -- kind of seemed to me that it was like people were afraid to talk. They were afraid to speak. They were afraid to challenge anything that came from any member of her leadership. It was a very almost palpable toxic, fearful environment.

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I felt that under Cindy’s administration, under her leadership, there had been a culture of secrecy, intimidation and fear, and I felt that it was important that -- I felt that it was important that I speak to what I had experienced, what I had observed, what I knew to be true.... I wanted -- I wanted to have an opportunity to tell the truth. I wanted people to have an opportunity to hear firsthand, you know, what had happened, or what --you know, things that I knew had happened. [Exhibit 6, pp. 38-39, 102.]

Q. Okay. Let’s turn now to your time at the Department during the administration of Superintendent Hill. What was it like to work at the Department with Superintendent Hill?

employees they interviewed what positive experiences they had under the Hill Administration. Some employees had an extremely difficult time naming any positive experience she had at the WDE during the Hill Administration. [Exhibit 88; Exhibit 89.] Others felt unsafe at the workplace. Superintendent Hill and members of her leadership team would go “stomping down the hallway in a blue rage,” with raised voices, and people were berated at meetings. [Exhibit 30, p. 3.] Still another employee felt distrusted and demeaned by the Hill Administration. [Exhibit 1, p. 667.] Superintendent Hill told the former Human Resource Manager at WDE, Karen Kelley, that she did not trust her and exhibited a tone of anger when she spoke with Ms. Kelley. [Exhibit 10, p. 701.] When Superintendent Hill would call Kelley into her office for an infraction, Superintendent Hill would get very close to Kelley, in her face and the Superintendent would raise her voice. One time she slammed papers. [Exhibit 10, p. 701.] Roger Clark believed that the videotaping of personnel at meetings was an act of intimidation. [Exhibit 4, p. 810.]

Angela Benner, former State of Wyoming Human Resource Manager, was involved in at least two HR investigations at WDE during the Hill Administration. Ms. Benner states that a good majority of the employees who spoke with her feared retaliation for any complaints they made. They were afraid and many WDE employees came to see Benner with a partner. [Exhibit 2, p. 838.] A WDE employee described Hill’s management style as difficult, erratic, threatening and unpredictable. [Exhibit 14, p. 227.] A WDE supervisor spoke of her time at the WDE as being a “survivor.” [Exhibit 15, p. 992.] After Superintendent Hill was removed as head of the Department by Senate File 104, morale was so low and the Department was so damaged that a psychologist was hired to provide counseling services for WDE employees who were adversely affected by events under Superintendent Hill’s supervision.

Another cause of this fear and intimidation, as well as dysfunction within the Department, was Hill’s idea of a “leadership team” rather than a “leadership structure.” No one knew who their ultimate supervisor in the leadership team was and some employees therefore felt like they had to answer to all of them. [Exhibit 13, pp. 911-912.] It was hard to move initiatives forward during the Hill Administration because there had to be a consensus with everyone on the leadership team, which promoted an atmosphere of constant tension. [Exhibit 13, p. 920.] The Hill Administration management system was described to the Committee as creating “an oppressive, dysfunctional, destabilized environment and agency.” [Exhibit 15, p. 977.]

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A. The words I most commonly heard when I was there during that time was it was a very hostile work environment. Employees appeared to be on edge all the time. There were health issues amongst some of the employees that worked there. They would come and talk to me, but they did not want to file a formal complaint about anything because that felt to them like they were putting a target on their back. The employees expressed fear of Miss Hill and her leadership staff. They feared losing their jobs. I dealt mostly with resignations and transfers out of our agency. I had employees that would come to me and request my assistance in helping them to find other jobs with -- as far as state agencies go. [Exhibit 10, p. 700.]

Also concerning to the Committee is that Superintendent Hill was so fixated on implementing her perceived vision for statewide education, that she had no idea that her WDE employees were fearful or that they were experiencing so much work related stress. [Exhibit 9, pp. 1039-1040.]

Many of these employees stated to the Committee that they had no outlet in which to address the fear and intimidation in the workplace. This was because after the retirement of Karen Kelley, Superintendent Hill petitioned A&I for the reclassification of the Human Resource Manager from a permanent classified position to an at-will, executive level position. As an at-will position, there were no prerequisite qualifications for the position. [Exhibit 10, p. 713.] One person hired by Superintendent Hill to be the Human Resource manager for an agency of approximately 150 employees, Megan Miesen, had no human resource experience and had previously served in a clerical position and as chauffeur for Superintendent Hill.<sup>47</sup> Many WDE employees would not confide in this HR Manager because they believed (correctly or not) that she was simply a pawn of Superintendent Hill. They believed that at best nothing would be done to address their complaint, or at worst, they would be retaliated against for making the complaint. [Exhibit 2, pp. 859-860.]

Ms. Miesen's inexperience and perceived personal ties to Superintendent Hill created a lack of trust by the employees of the WDE with their own Human Resource Division. This, in turn, created a situation where employees were reluctant to use their own Human Resource Division and were left to deal with fear and intimidation in the workplace as best they could. It also explains why there were so few complaints filed by WDE employees during the Hill Administration as compared to the number of WDE employees who have since spoken out about the treatment they received at the Department.

### **FINDINGS – Fear and Intimidation in WDE**

It is clear to the Committee that not all WDE employees felt fearful or intimidated during the tenure of Superintendent Hill, but that a significant number of employees did feel threatened in their workplace, and many felt they had no effective outlet available to them to address that situation. The circumstances these WDE employees experienced were intolerable in any work environment.

A significant portion of the duties of the Superintendent of Public Instruction is the management of the employees within the Department of Education. A crucial management responsibility is providing a safe, respectful work environment which complies with the State Personnel Rules and the State Anti-Discrimination Policy. Superintendent Hill failed in this management responsibility. She actively created and passively allowed a climate of fear and

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<sup>47</sup> As to this WDE HR Manager, Angela Benner stated that she knew Ms. Miesen had no education, training or experience in HR. Ms. Miesen did not know how to keep a personnel file, and did not know basic requirements of the Americans with Disabilities Act or Family Medical Leave Act. Benner believed Ms. Miesen was a very nice and smart young lady, but she didn't know much about HR. [Exhibit 2, p. 839.]

intimidation to permeate the Department during her administration. Her obliviousness to the toxic work environment at WDE only serves to heighten her failure.

The Committee finds that steps need to be taken to ensure that Wyoming state employees are provided a meaningful opportunity to address issues of fear and intimidation in the workplace. Some possible solutions to this problem are presented in Section IV of the Report.

**E. SUPERINTENDENT HILL'S TESTIMONY BEFORE THE SELECT INVESTIGATIVE COMMITTEE ON JANUARY 8, 2014.**

The Special Investigative Committee ensured that Superintendent Hill had the opportunity to tell her side of the story through her testimony to the Committee. Superintendent Hill had a vacation planned during the time the Committee had scheduled the hearings. Out of courtesy to Superintendent Hill, the Committee hearings were rescheduled for early January. When the hearing opened on January 6, 2014, Superintendent Hill advised the Committee that she was going to officially announce her campaign for Governor in Newcastle, Wyoming on the evening of January 8, 2014, and that whether the hearings were done or not, she was going to leave at noon on January 8<sup>th</sup>.

In order to accommodate Superintendent Hill, the Committee restructured the committee schedule and scheduled Superintendent Hill's testimony for the morning of January 8<sup>th</sup>. The hearing was opened the morning of January 8<sup>th</sup>, and Superintendent Hill was sworn in to testify. With no advance notice to the Committee, Superintendent Hill announced she had made special arrangements (she had a staff member drive her State vehicle to Newcastle, and she made arrangements to fly to her announcement, and have the staff member flown back to Cheyenne), and that she preferred to testify on the afternoon of January 8<sup>th</sup>. Again, the Committee accommodated Superintendent Hill's wishes.

Rather than avail herself of the opportunity, through her own testimony, to clearly address the concerns of the Committee and the allegations against her, Superintendent Hill's testimony was hostile, vague and misleading.

Sixteen witnesses, including Superintendent Hill, were called to testify under oath before the Committee. The behavior of the Superintendent at these hearings did little to convince the Committee that the allegations against her were unfounded, and in fact, persuaded the Committee that Superintendent Hill was responsible for many of the actions which were the subject of the investigation. Rather than take the opportunity to explain her position, and the reason she took the alleged actions, she took an unprofessional approach of obstinance, obstruction and obfuscation.

Pursuant to Committee Rules, the Superintendent was allowed to submit questions to the witnesses who appeared before the Committee. The Superintendent on many occasions did not use this opportunity to discover the merit of allegations in the Governor's Inquiry Team Report,

but to make personal attacks on the witnesses and to attempt to bolster her allegations that a conspiracy exists to undermine her educational vision.

Finally, at the end of Superintendent Hill's testimony, she was given the opportunity to correct or address anything she heard at the hearings with which she disagreed. She declined that opportunity, and instead chose to fly to Newcastle to announce her campaign for Governor.

**1) Superintendent Hill's Testimony on the Use of ARRA Funds at Fremont #38**

Perhaps the most concerning testimony to the Committee was when Superintendent Hill appeared to deliberately mischaracterize the facts. Throughout the hearing, and even during her own testimony, Superintendent Hill lead the committee to believe that Governor Mead forced upon her the idea of using ARRA funds (Stimulus Funds) to fund programs within the Wyoming Department of Education. The Committee finds and concludes from the available evidence that Superintendent Hill and members of her leadership team actively lobbied for use of the Stimulus Funds and that, in fact, the Governor's Office was quite reluctant to apply for these funds. Superintendent Hill misled the Committee about her desire to receive Stimulus Funds and the Governor's role with those funds for obvious political purposes. The evidence clearly shows that Superintendent Hill wanted \$10 million in Stimulus Funds, in part to implement WYR in Fremont #38. Rather than honestly explain why she believed receiving these funds was in the best interest of the State, she chose to mislead the Committee.

Despite the clear attempt by Superintendent Hill to utilize Stimulus Funds, she testified in front of the Committee that it was the Governor who was requiring her to use ARRA funds. [Exhibit 9, pg. 1054.] During the Committee's hearings, Superintendent Hill asked Diane Bailey if she remembered a meeting in June of 2011 in which Hill made it clear that WDE would not be taking ARRA funds. [Exhibit 1, pp. 686-687.]

Q. [BY HILL] Do you remember that the Governor's Office wanted Superintendent -- let me -- do you remember that the Governor's Office wanted Superintendent Hill wanted to take the 10 million in ARRA funds? I think it's do you remember that the Governor's Office wanted Superintendent Hill to take the 10 million in ARRA funds?

A. I don't have any knowledge of the discussion between Cindy and the governor, sorry. [Exhibit 1, p. 687.]

Diane Bailey did not recall the facts or discussion the way it was characterized by Superintendent Hill.

When testifying, Superintendent Hill stated directly that it was not correct that she pitched the idea of using \$10 million in Stimulus Funds to implement WYR in a Wyoming School District. [Exhibit 9, p. 1044.] She maintained in her questioning that it was Governor Mead who was forcing the Stimulus Funds on her. [Exhibit 9, p. 1054.] Superintendent Hill



also testified that she did not believe the Stimulus Funds could be used in Fremont #38, and she was not inclined to use those funds. [Exhibit 9, pg. 1054.] Superintendent Hill also testified as follows:

Q. [BY SALZBURG] Did there come a time when you were told that ARRA funds were not available for that purpose?

A. [BY HILL] I remember I was told that the Governor's Office would like us to spend \$10 million in ARRA funds, and I recall that there was a time frame to spend those ARRA funds. So at some point, yes, the ARRA funds would have -- that time frame would have been expired. [Exhibit 9, p. 1054.]

The documents produced by Superintendent Hill reflect a vastly different reality. Superintendent Hill wrote, on July 25, 2011, in a letter to Superintendent Henderson of Fremont School District #38 that there may be ARRA funds available to WDE for use at Fremont #38. [Exhibit 9, pp. 1052-1053; Exhibit 20, pp. 1-2.] In that letter, Superintendent Hill wrote:

The purpose of this letter is to help set the stage for discussions surrounding the topic of monies that may be made available to the Wyoming Department of Education (WDE) via the State Fiscal Stabilization Fund (SFSF; onetime appropriation under the American Recovery and Reinvestment Act of 2009 [ARRA]) and which might be available for use to help improve student learning in Wyoming.

As you are most likely now aware, late last week we became aware of a funding stream through SFSF that might be available to support heretofore unfunded student learning initiatives. Although these funds are not guaranteed to be disbursed, the WDE leadership embarked on a path to rapidly identify projects that would adhere to the four principles of the SFSF program (see below):

- Spend funds quickly to save and create jobs.
- Improve student achievement through school improvement and reform.
- Ensure transparency, reporting and accountability.
- Invest one-time ARRA funds thoughtfully to minimize the "funding cliff."

Fremont County School District #38's Superintendent, quite coincidentally, had approached a member of my team with information about the extremely low literacy scores that plague that district. As I stated previously, my staff met twice last week to discuss the SFSF funds and what evolved from those meetings was a commitment to pursue a working relationship with Fremont County School District #38 wherein the literacy needs of that district could be addressed.

The document contains Superintendent Hill's signature at the end of the letter, not Governor Mead's. [Exhibit 20, pp. 1-2.] It is unclear why Superintendent Hill wrote to the Fremont #38 Superintendent that he had contacted her. Superintendent Hill also could not explain why she wrote this. [Exhibit 9, p. 1051.] Among other things that Superintendent Hill states are necessary before the Wyoming Department of Education begins work at the Arapaho Elementary School is an Agreement to Proceed from Governor Mead. [Exhibit 58, p. 42.]

Documentary evidence refutes Superintendent Hill's testimony.

Correspondence between WDE and the Governor's Office demonstrates Superintendent Hill's continued effort to seek the ARRA funds for Fremont #38 after WYR was initiated at

Fremont #38. Superintendent Hill's leadership team created a draft action plan, assigning duties and responsibilities for obtaining the Stimulus Funds. There were ongoing discussions between the Governor's Office and the WDE regarding the use of the Stimulus Funds. In an e-mail dated September 11, 2011, Deputy Chief of Staff Tony Young, on behalf of the Governor, requested the following information from the Superintendent of Public Instruction regarding the use of the Stimulus Funds before the Governor would certify the use of the funds:

Cindy,

Governor Mead has reviewed your request that he make application for \$10 million remaining in Wyoming's allocation under the State Fiscal Stabilization Act. As you know, the Governor has concerns about the use of federal funds generally, the impact these funds have on state policy and the possibility of creating a dependency that may have to be replaced with state resources. He would appreciate a personal written response from you on the following items:

1. Are these funds absolutely necessary to improve student results?
2. Are you contemplating a fund swap that replaces state funds with federal funds, and then frees up state funds for district use?
3. If that is the plan, will you take responsibility to assure that the \$10 million in available funds is used responsibly for our districts?
4. Can you assure that there will not be an effort to seek continuing state general or school foundation funds for this \$10 million?

The State Land Office has been designated as the fiscal agent for all SFSF funds, and in the event we make application for the remaining allocation, this must continue. Our conversations with the United States Department of Education confirm that they will accept only a single fiscal agent for the full SFSF allocation of \$67 million.

I understand Fred Hansen of your office has been in communication with Jeanne Norman in the State Lands Office. Fred indicates that your agency will allow districts to claim prior expenditures for the \$10 million. Please confirm if this is your approach.

Thanks

Tony

In reply to that e-mail, in a letter written by Christine Steele and signed by Cindy Hill, the WDE attempts to answer the questions posed by the Governor:

Dear Mr. Young:

Thank you for reviewing the request from the Wyoming Department of Education (WDE) to allocate the remaining \$10,052,126 in the State Fiscal Stabilization Fund (SFSF) to the school districts.

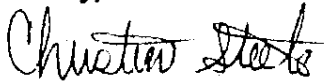
It has been our experience in the WDE that the districts we serve operate in good faith, monitor their activities and use their resources in the very best ways that they can to improve student learning. However, we cannot guarantee that this funding or any single resource is absolutely necessary to improve student learning. We believe that the SFSF funds will be an opportunity for districts to provide additional support for their educational programs.

While districts continue to be well funded and supported by our state, one option is for districts to use SFSF funds for pre-existing costs. To assure that districts use funds responsibly, WDE will create an application in which districts agree to the SFSF assurances, federal guidance, and report through Section 1512. These assurances include section 442 of the General Education Provisions Act (GEPA) (20 U.S.C. 1232e). In addition, the Local Education Agency must assure that it will (1) administer the program in accordance with all applicable statutes and regulations, (2) use fiscal control and fund accounting procedures that will ensure proper disbursement of and accounting for the funds.

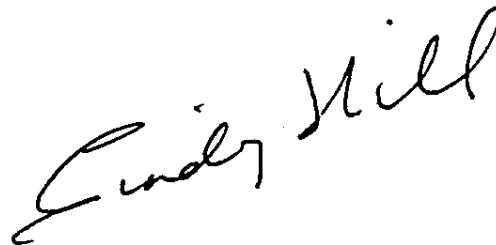
Allowable pre-existing costs could either be state or federal according to the SFSF guidance. Districts make their own decisions about the use of funds and they may choose to either pay pre-existing costs or purchase goods and services prior to September 30, 2011. The funding formula for state foundation assistance is not dependent on the provision or removal of federal funds. Thus, the impact of future requests for state funds should not be significantly impacted by the award of these federal funds. It ultimately remains a district's decision on how best to use its funds.

We appreciate the help we have received from Jeanne Norman at the State Lands Office and look forward to continue our work with her on this project.

Sincerely,



Christine Steele, Deputy of Operations  
Wyoming Department of Education



CS:cb

In an e-mail, dated September 22, 2011, John Masters explains why Superintendent Hill endorsed the letter, and did not author it.

Hi Tony,

I just returned from Fremont #38 where last night the board agreed to move ahead with our reading tutorial program and to seek grants to support the work. Unfortunately I did not receive your phone message until a few moments ago. I was able to catch Cindy's attention to the request. She is heading back to the State school board meeting but we printed off Christine Steele's letter of the 14th and Cindy endorsed with her signature. I have the original in my possession and

can deliver it to you tomorrow. In the meantime here is a scanned image of the letter. I hope this will suffice. Time is short so please let me know if you have questions.

John

The Committee finds that Superintendent Hill's sworn testimony before the Committee is refuted by documentary evidence created by Superintendent Hill and members of her staff at the time of implementation of the Fremont #38 program.

## **2) Superintendent Hill's Inability to Recall Key Details before the Committee**

Provided with an opportunity to fully and openly answer questions posed to her by Special Counsel and members of the Committee, Superintendent Hill was instead largely combative, nonresponsive or stated she couldn't remember important details of key events while she served as the agency head for the WDE. Additionally, many of Superintendent Hill's responses to questions were intentionally misleading or designed to stonewall the Committee. The Committee finds Superintendent Hill's testimony particularly disturbing considering her repeated statements that she welcomed the opportunity for a public vetting of the allegations against her.

Superintendent Hill had six months to review the MacPherson Report, which was the basis of the Committee's investigation, and nearly a month after she received her subpoena to prepare for her testimony. In spite of the notice and the time to prepare to testify, Superintendent Hill did not know the answers to many of the obvious and important questions which were the subject of the Committee's inquiry. In many instances, Superintendent Hill testified she did not know or remember important facts. While some of Superintendent Hill's failure to recall events can certainly be attributed to the passage of time, the Committee questions her lack of ability to remember key details of events which were contentious at the time they occurred and have remained contentious. Some of the more egregious examples of Superintendent Hill's failure to remember important facts include that she:

- Could not remember details about Kevin Lewis filming WDE employees with a 360 degree camera in Sheridan or whether it was reported to her that the body language of a WDE employee suggested that they didn't support Supt. Hill. [Exhibit 9, pp. 1010-1011];
- Could not recall excusing herself from the Roger Clark "body language" meeting, and cannot recall saying she hoped everyone at the meeting would "do the right thing." [Exhibit 9, p. 1013];
- States that she cannot recall whether Kevin Lewis was going to tell Roger Clark that his body language suggested nonsupport, not that it didn't happen. [Exhibit 9, p. 1013];

- Could not recall making the statement at the first agency-wide meeting on January 5, 2011 that there were members of her transition team who would not be illuminated. Potentially more incredible, Hill testified that she had reviewed the WEN video of the meeting after the MacPherson report came out because it had “misquoted” her, but she did not review the entire video of the meeting. [Exhibit 9, p. 1017];
- Could not imagine what she meant three years ago when she said that members of her leadership team would never be illuminated. [Exhibit 9, p. 1018];
- Could not recall whether Kevin Lewis was employed when she asked him to serve on the leadership team. [Exhibit 9, p. 1020];
- Could not recall Kevin Lewis’ immediate employer prior to the WDE. [Exhibit 9, p. 1020];
- Does not know whether John Masters is currently a member of the Wyoming State Bar, despite hiring him to serve as WDE Legal Counsel. [Exhibit 9, p. 1021];
- Could not recall stating at the all agency meeting that she didn’t know what function Kevin Lewis would serve but she knew he would be on her leadership team. [Exhibit 9, p. 1026];
- Does not know what information Sam Shumway gave her about Angela Benner’s interviews regarding important personnel issues in WDE. [Exhibit 9, pp. 1036, 1101];
- Could not recall for what position Megan Miesen was hired. [Exhibit 9, p. 1037];
- Could not recall what the duties of Miesen’s original position were. [Exhibit 9, p. 1037];
- Does not know how many probationary employees were fired in her time at WDE. [Exhibit 9, p. 1041];
- Does not know how many at-will employees were fired during her time at WDE. [Exhibit 9, p. 1041];
- Could not remember exactly what ARRA funds were to be used for or whether they could be used to implement a reading program at Fremont #38. [Exhibit 9, p. 1055];
- Does not recall whether there were funds in the WDE budget to implement a reading program in Fremont #38. [Exhibit 9, pp. 1055-1056];



- Does not know if there were other reading programs considered by WDE for implementation at Fremont #38. [Exhibit 9, p. 1060];
- Does not recall a meeting with John Masters on or about August 25, 2011, about concerns raised by Gail Eisenhower concerning Eisenhower and her team going to Fremont #38 and teaching reading to children. [Exhibit 9, p. 1068];
- Does not have the details or knowledge base to know how many hours a month a state employee typically works. [Exhibit 9, p. 1075];
- Could not recall whether she reviewed the 900 series report before references had been taken out. [Exhibit 9, p. 1079];
- Could not recall what the formal Attorney General Opinion on classification of positions as at-will stated, despite the fact she requested the opinion [Exhibit 9, pp. 1083-84];
- Could not recall whether she ever saw a copy of the Benner report despite the fact that she requested it. [Exhibit 16, p. 1; Exhibit 9, p. 1084];
- Could not recall whether Masters ever shared the findings of the Benner report with her despite the fact she requested the report. [Exhibit 16, p. 1; Exhibit 9, p. 1084];
- Could not recall that JAC was concerned with T2T – recalls the budget footnote. [Exhibit 9, pp. 1094-1095];
- Could not remember if Trent Carroll and Greg Hansen were directed to remove references to T2T and SpLiT. [Exhibit 9, p. 1098].

Rather than avail herself of the opportunity to explain her position and the reason for her actions, Superintendent Hill displayed ignorance, whether deliberate or not, of many of the key facts which were the subject of the investigation. It is particularly troubling that Superintendent Hill has such a superficial knowledge of the financial transactions of the Department of Education, particularly when financial misconduct and diversion of funds were central to the allegations against her.

### 3) **Stonewalling**

Rather than being forthcoming, open and honest in her testimony to the Committee, there are several examples where Superintendent Hill stonewalled, rather than directly answering a question, on key issues that were the subject of the Committee's inquiry. For example, one of the concerns of the committee was that 48% of the employees of the Department, including many key employees, left the Department within the first two years of her administration. The Committee was concerned that highly qualified, trained and experienced members of the WDE staff were leaving the Department of Education as fast as they could, creating a significant loss



of institutional knowledge on the Department. Rather than directly answer the questions, Superintendent Hill disputed the accuracy of the percentage of turnover among WDE employees. [Exhibit 9, pp. 1013-1017 and 1043-1044.]

One of Superintendent Hill's supporters, and the person who invited her to Fremont #38, was Randy Tucker. He wrote an op-ed supporting Hill in the Riverton Ranger. Rather than answer questions about statements made in the op-ed, Superintendent Hill repeatedly questioned the "journalistic liberties" of the author (even though she was being asked about an opinion piece) and refused to directly answer questions about the content of the op-ed piece. [Exhibit 9, pp. 1048-1050.] The Superintendent's obstinance in answering questions about the Tucker op-ed piece appeared to serve no other purpose than to thwart the investigative activities of this Committee.

Among the allegations of misconduct, as set forth above, is the allegation concerning the manipulation of the School Improvement Grant so that Fremont #38 would receive the grant and be able to pay for the WYR intervention imposed by WDE after the Stimulus Funds that Superintendent Hill was seeking were not available. Rather than clearly addressing her participation in manipulating or not manipulating the SIG for Fremont #38, Superintendent Hill refused to plainly answer questions about her involvement with the Fremont #38 SIG. [Exhibit 9, pp. 1060-1062.]

Another allegation, and one of the concerns listed in the A-133 audit, is WDE's contracting with and modification of the contract with Paul Williams, as detailed above.<sup>48</sup> Rather than explain, in detail, the role of Paul Williams with the Assessment Division, Superintendent Hill again refused to provide direct answers to questions posed by the Committee and special counsel. [Exhibit 9, pp. 1072-1074.]

One of the items of most concern to the Committee is the scrubbing of the reports submitted to the Joint Appropriations Committee in an effort to hide the fact that the WDE was continuing the Teacher-to-Teacher programs under a new name: SpLiT. The changing of the name from T2T to SpLiT, and the cover-up by scrubbing the reports, indicate to the Committee that Superintendent Hill knew she was doing something in violation of the law as contained in the Budget Bill Footnote. Rather than explain her actions, she repeatedly sidestepped questions concerning the scrubbing of the 900 series report to hide the fact that she was running the Teacher-to-Teacher programs. [Exhibit 9, pp. 1095-1100.]

#### **4) Refusal to Answer Questions**

Another technique Superintendent Hill attempted to use to obstruct the investigation of the Committee was a refusal to answer simple questions placed to her. Rather than a meaningful exchange of information, Superintendent Hill had to be asked easy questions multiple times in order to get an answer. Examples of Superintendent Hill's refusal to answer questions include:

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<sup>48</sup> See Williams Contract Section of this Report, starting on page 37.

1. Attorney Salzburg had to ask the question about “honoring the leadership” three times before Superintendent Hill answered. [Exhibit 9, pp. 1006-1007];
2. Attorney Salzburg had to ask multiple times about what Superintendent Hill attributed the loss of nearly half of WDE employees in the first two years of her tenure to. [Exhibit 9, p. 1015];
3. Initially Superintendent Hill refused to answer a question about whether there were members of her transition team that she didn’t wish to identify to WDE employees. [Exhibit 9, p. 1018];
4. Superintendent Hill had to be asked multiple times about how she decided upon members of her leadership team. [Exhibit 9, pp. 1018-1019];
5. Superintendent Hill had to be asked multiple times whether the purpose of the November 13, 2012 meeting was to address the liaison report. [Exhibit 9, p. 1028];
6. Superintendent Hill had to be asked multiple times whether Megan Miesen was a person who honored the superintendent's leadership. [Exhibit 9, pp. 1038-1039];
7. Superintendent Hill had to be asked multiple times whether she believed in February of 2012 that all WDE employees should be at-will employees. [Exhibit 9, p. 1041];
8. Superintendent Hill had to be asked multiple times whether she eventually decided to implement a reading program at Fremont #38. [Exhibit 9, pp. 1056-1057];
9. Superintendent Hill had to be asked multiple times about what reading intervention program she considered implementing at Fremont #38. [Exhibit 9, pp. 1059-1060];
10. Superintendent Hill had to be asked multiple times for her understanding of the term “highly qualified” as related to a SIG-funded intervention. [Exhibit 9, pp. 1063-1064];
11. Superintendent Hill had to be asked six times whether she attended a meeting with Trent Carroll and Greg Hansen where they were directed to remove references to T2T and SpLiT from submission to JAC. [Exhibit 9, pp. 1095-1099].

The fact that Superintendent Hill would not answer direct questions regarding key issues alleging misconduct in her office, her flippant disregard of the process, and the inability of the Legislature to receive answers to questions about actions she took as Superintendent of Public Instruction is concerning to the Committee. As a public official, Superintendent Hill should be proud to answer questions about the actions she took as the leader of the Department of Education, not evasive, disrespectful and combative. The people of the State of Wyoming deserve elected officials who are willing to answer direct questions about their conduct when allegations of serious misconduct arise.

5) **Superintendent Hill was Deliberately Evasive in Differentiating Between At-Will Employment and Permanent Employment**

One of the issues facing the Committee was Superintendent Hill's intentional disregard of the State of Wyoming Personnel Rules, and the laws regarding State and federal employees. It is not lost upon the Committee that Superintendent Hill campaigned on the promise that she was going to get rid of the dead weight in the Department of Education, and one of the ways she was going to accomplish that task was to make all of the Department of Education employees at-will employees. When she took office, she tried to make good on her campaign promise. Existing personnel rules and laws made it impossible for Superintendent Hill to accomplish her campaign promise. Superintendent Hill asked for an Attorney General's opinion determining whether she could transfer permanent employees to at-will status. The Attorney General ruled that she could not.

All of the foregoing is an indication, that Superintendent Hill had at least a rudimentary understanding of the difference between at-will employment and permanent employment. However, when asked basic foundational questions about the difference, the Committee concludes Superintendent Hill was deliberately evasive in her answers. The following exchange illustrates this point:

A. [BY HILL] An at-will employment – an at-will employee is someone who you have the ability to work with them, and then once due process is exhausted, then you can dismiss someone who is an at-will employee. Someone who has permanent employment has a -- a property right to their employment.

And so when this issue came up, Mr. Salzberg, as to at-will employees and permanent employees, I felt that the at-will or the permanent employees may have a – I shouldn't say do, may have a property right, and so I had conversations with Governor Mead regarding the property right of a permanent employee should never have been questioned or that should never be something that we should ever request of someone to change from permanent employee to at will. [Exhibit 9, p. 1024.]

Q. [BY SALZBURG] Superintendent Hill, do you understand that the principal attribute of at-will employment is the ability to discharge the employee without cause or reason?

A. Mr. Salzberg, I think that at-will employees do have access to due process.

Q. Why?

A. I think every employee does.

Q. You mentioned earlier in your response some reference to a property right.

A. Uh-hum.

Q. Does an at-will employee have a property right in his employment?

A. No.

Q. So why are you talking about due process?

A. I think due process is -- without a property right you still have due process.  
[Exhibit 9, p. 1025.]

**6) Personal Attacks on Witnesses**

All of the witnesses except Superintendent Hill, testified honestly, and only testified to the facts as they knew them. Throughout this entire process, Superintendent Hill, when faced with facts or process she could not rebut, resorted to personal attacks about the witnesses and Committee members in an attempt to intimidate the witnesses or Committee members from going forward with their actions. This diversion technique, designed to direct attention away from the true facts, and onto ancillary issues, was a constant throughout this investigative process, and the Committee expects the Superintendent to continue these attacks after issuance of this Report, rather than addressing the factual content contained in the serious allegations and conclusions contained within this Report.

The attacks became so petty that at one point in the testimony, Superintendent Hill blamed Witness Teri Wigert for her transition office being too small and windowless. [Exhibit 15, p. 990.]

The personal attacks on the witnesses by Superintendent Hill had little or no bearing on the areas under investigation by the Committee. Nearly every witness who testified before the Committee was subject to personal attacks by Superintendent Hill. The attacks were not calculated to bring any additional evidence forward, but were calculated to harass, embarrass and punish anyone who had the temerity to testify against Superintendent Hill. Those personal attacks continued after the Committee Hearings. [Exhibit 62.] While there is little the Committee can do to address the behavior, one would expect an elected official of the State of Wyoming to have the dignity and respect of the office to refrain from such personal attacks, and when such attacks are made in her name, to call for them to stop. Such is not the case with Superintendent Hill.

#### **IV. CONCLUSIONS AND RECOMMENDATIONS**

The charge of the Committee was to come to conclusions and recommend further legislative action. The Committee is very concerned that under the Hill Administration of the WDE, the law was disregarded in many instances and the operation of a state government agency was subject to the whims of one elected official.

The Committee is concerned that the Wyoming Department of Education under Superintendent Hill's leadership strayed from being a government of laws to a government of the person – Superintendent Hill.

Government operations should always be conducted in compliance with the law. Despite the efforts of a vocal group of Superintendent Hill supporters and frequent press releases by the Superintendent designed to derail the investigative process, the Committee was able to complete its task. The Committee offers the following recommendations to ensure the integrity of government operations from top to bottom and to ensure Wyoming Government is operated wholly within the bounds of the law.

##### **A. Lack of Effective Reporting Procedure**

A consistent theme voiced by the employees of the Department of Education was that under Superintendent Hill, there was an atmosphere of fear, intimidation and retribution. Many of the highly qualified employees who were able to leave the Department, did leave. Superintendent Hill justified the mass exodus as getting rid of the dead weight, and often bragged about her ability to return portions of her salary budget due to the huge decrease in work force.

The atmosphere of fear, intimidation and retribution, coupled with a large number of the employees who were afraid to lose their jobs, resulted in a situation in which employees knew that laws and constitutional provisions were violated, but did not report them publically.

While the situation is understandable, the Committee is very concerned about the actions of State employees in doing things they knew were wrong, and justifying those actions because they were afraid for their jobs. Violation of the law at any level should not be tolerated, and when the law is being violated, reports should be made to appropriate officials.

As a remedial legislative effort, the Committee suggests the Legislature develop a confidential reporting process, to an official outside the agency chain of command, with the authority to investigate violations of the law.

The Committee further suggests the establishment of an independent compliance officer who has authority to investigate and report to appropriate officials any violations of law.

Ultimately, employees did report misconduct to members of the Legislature, but they did so with the request that their identities be withheld. At the passage of 2013 SF 104, the Legislature was in possession of 32 unsigned letters, and one signed letter alleging much of the misconduct that is contained in this report. The one signed letter, the letter from Beth VanDeWege, was disclosed to Superintendent Hill in a telephone call by Representative Lubnau and Representative Throne on January 23, 2013. The disclosure of the letter led to the interrogation of new employees at WDE that afternoon.

Members of the Legislature knew, in large measure, about the misconduct occurring in WDE, but were crippled with the requests of employees who would not sign affidavits and would not go on the record to testify about wrongdoing.

Two things occurred to change that situation: 1) 2013 HB 221 was passed which extended whistleblower protection to reports of misconduct by elected officials; and 2) 2013 SF 104 was passed which removed Superintendent Hill from her supervisory role.

After the passage of those two pieces of legislation, the flood gates opened and WDE employees began to share volumes of information about misconduct.

The Committee concludes the State of Wyoming should not tolerate a situation in which legislative intervention is necessary to investigate, prevent and remediate wrongdoing.

The Committee believes a culture of compliance with the law should be encouraged. As a result, the Committee suggests legislation creating a confidential reporting process to an independent compliance officer with the authority to investigate and report violations.

## **B. Compliance Education**

The next Committee recommendation, which operates hand-in-hand with the creation of a compliance officer, is mandatory State employee training in government ethics, laws, whistleblower protection and the availability of a confidential reporting process to report violations. The existence of a compliance program does not work to create a culture of compliance without State employees knowing about the process.

Furthermore, educating State employees and elected officials on the legal expectations of public officers and employees fosters an environment that the State is operating as a government of laws, not a government of individual preferences.

Development of a compliance education program is one step in a process to ensure integrity and trust in State government operations.



**C. Compliance Plan**

Coupled with the prior two recommendations, the State of Wyoming should develop a comprehensive compliance plan that outlines the requirements of state and federal law, the reporting process, and that gives contact information, and is readily available for state employees and others to access at any time.

A bill which encompasses the prior 3 recommendations is attached hereto as Exhibit 83.

**D. Independent Human Resources Officer**

A serious concern of the Committee was the replacement of a very experienced HR professional with a new employee, six months out of college, with no HR experience. No other employed position in State government carries with it as much potential for liability as the human resource officer.

The State is obligated to comply with often technical and complex federal and state laws involving workers compensation, employee benefits, confidentiality, civil service and wrongful termination. A qualified human resources professional is essential both as a risk management official and as an administrative officer.

Accurate documentation, administration of benefits, managing legal requirements and consistent employee discipline are essential to the operation of any large employer.

The Committee is concerned that the intricate human resources activities of WDE were placed in inexperienced hands. The Committee is also concerned that the legal requirements which apply to all Wyoming State agencies became subject to the political whims of Superintendent Hill.

As a check and balance to the absolute power of an elected official, and to assure strict compliance with the law, the Committee recommends that human resource positions should be classified permanent positions and not allowed to be reclassified as "at-will positions." At-will employees serve at the whim of the elected official, and as such, are not as free to make recommendations which may not be well received by the elected official or agency director. Instead of having an at-will employee tell the elected official what the official wants to hear, the Committee recommends a position in which the employee tells the elected official what they need to hear.

That is not to say the ultimate decision making authority does not rest with the elected official, but rather that the decision making is done after being accurately informed of the law and the facts.

As detailed earlier in this report, there are several instances in which Superintendent Hill either ignored employment law, or willfully violated it. A well trained HR person with job security may have helped prevent such a situation.

Furthermore, since HR is a function of the entire State government, rules regarding employment of State employees should be applied uniformly. The Committee recommends human resource officers be employed by and report to the Department of Administration and Information and not directly employed by the agency in which they are housed. Such a reporting relationship gives HR professionals some degree of autonomy to make full and accurate recommendations to elected officials. The relationship also allows for uniform application of State employee benefits, rules and laws. Attached to this Report as Exhibit 85 is 2014 HB146 (engrossed), which requires a study from A&I on creating secure, independent and knowledgeable HR professionals in Wyoming State Government.

#### **E. Management Override**

Two A-133 audits, one ending in fiscal year 2012 and one ending in fiscal year 2013, expressed serious concern about the Hill administration leadership team's management override of financial and contractual relationships.

The Committee is very concerned that management override of legal requirements occurred easily and often, particularly with acknowledgement in some cases, that the management override would, indeed, violate the law.

The Committee recommends the State of Wyoming develop a process in which every management override is reviewed by the Attorney General's Office to ensure the management override complies with the law.

#### **F. Impeachment**

The overriding purpose of this investigation was, from the beginning, to obtain the truth concerning management and administration of the Wyoming Department of Education and to provide a summary and findings of those results to the people of Wyoming. The Committee's central purpose was not to draft articles of impeachment.

Although the Committee was aware that impeachment considerations were potentially within the purview of its charge, none of the Committee's time was used in debating impeachment.

The opinions of individual Committee members likely range from one extreme to the other on the issue of impeachment. Some, no doubt, believe that the level of misconduct in the management of the Department by Superintendent Hill warrants impeachment considerations.

Likewise there may be those who feel the facts surrounding the Superintendent constitute impeachable offenses, but do not believe it is prudent to spend anymore time of the entire Legislature on this issue.

Still others, perhaps, believe the Committee findings do not rise to the level of impeachable offenses.

The Committee chooses to allow individual member(s) of the Wyoming House to review this report and the Committee Findings and decide what they believe is the proper course of action.

## **V. FINAL COMMENTS**

Cindy Hill was elected to the position of Superintendent of Public Instruction. The job carries with it constitutional and statutory limitations. One of those limitations was to respect the constitutional budget authority of the Legislature. Another of those limitations was to perform the statutory duties of the office with fidelity. Her obligation was to follow the law.

Cindy Hill, for whatever reason, chose not to follow the law. Upon her election, she fired or ran off most senior employees of the WDE with the institutional knowledge of how the budgetary, financial and human resource processes of the Department operated. She replaced those long-term employees with persons who were loyal to her, but had little or no experience managing an entire State agency. She refused to ask for legislative appropriations for her programs. She refused to perform her duties with fidelity.

In reaction to Superintendent Hill consistently, repeatedly and wilfully violating the law, the Legislature passed 2013 Senate File 104. While the statute was ultimately ruled unconstitutional by three out of five sitting justices on the Wyoming Supreme Court, the statute was not motivated by a power grab. The legislation was an attempt, in a system of checks and balances, to prevent more damage to Wyoming's educational system than had already been done by improving the management structure of the WDE.

The Committee finds Superintendent Hill's actions amounted to misconduct in office, and for that misconduct the Committee formally rebukes Superintendent Hill.

APPENDIX I  
PROCEDURAL MATTERS

**The Select Investigative Committee's Formation and Charge**

Beginning in 2012, members of the Wyoming Legislature began receiving reports and allegations of budgetary and personnel management issues in the Wyoming Department of Education (“WDE”), focused primarily on Superintendent of Public Instruction Cindy Hill and her leadership team. Those issues were reported to Governor Matt Mead under the Wyoming State Government Fraud Reduction Act (W.S. § 9-11-101 *et seq.*). In response to these allegations, Governor Mead assembled an Inquiry Team, headed by Rawlins attorney Catherine MacPherson in February 2013 to further investigate the reports.

The Inquiry Team released its reports on June 13, 2013. The Inquiry Team produced a Report consisting of eighteen (18) chapters grouped around specific issues of alleged mismanagement, misappropriation of funds or other improprieties. The Inquiry Team also submitted a Confidential Report (released in redacted form to the public) consisting of five chapters of personnel management related issues. The Inquiry Team stated that its charge was to collect and report information, not to prove or disprove any matter. To that end, the Report did not draw conclusions, make findings or recommendations. The Inquiry Team also released Interview Summaries of approximately eighty (80) persons which totaled some 1,500 pages with supporting materials (again, in redacted form to the public).

In response to the allegations contained in the Inquiry Team Reports, a majority of the members of the Wyoming House of Representatives requested that Speaker Tom Lubnau conduct a legislative investigation of issues involving the Wyoming Department of Education and the Office of the State Superintendent of Public Instruction. On July 12, 2013, the Management Council of the Wyoming Legislature authorized the formation of a Select Investigative Committee of the Wyoming House of Representatives to study and review the issues relating to budgetary and administrative activities within the Wyoming Department of Education, including issues identified by the Governor's Inquiry Team Report regarding the Wyoming Department of Education dated June 13, 2013 and subsequent reports released or resulting from that inquiry. The Committee was required to submit a report based on its investigation, including conclusions, findings and recommendations for further legislative action. The Committee was authorized to conduct hearings and to contract with such legal and technical staff or consultants as needed to conduct its study and review.

In response to the directive from Management Council, Speaker Lubnau appointed a Select Investigative Committee consisting of sixteen (16) members of the Wyoming House of Representatives. The Committee met for the first time on August 7, 2013. At that meeting, the Committee elected Tom Lubnau chair, adopted rules, and split into four (4) Subcommittees based on the following areas of investigation: 1) Fremont County School District #38, (Rep. Mike Greear, Chair); 2) Personnel Issues (Rep. Mary Throne, Chair); 3) Budget / Fiscal Issues (Rep. Tim Stubson, Chair); 4) Other Issues (Rep. Kermit Brown, Chair).

After the initial full Committee meeting, the Subcommittees held working sessions to determine the issues involving the WDE and the Office of Superintendent of Public Instruction which they believed may require additional legislative actions. The Committee then began to issue subpoenas and other requests for production of documents. The Committee issued numerous subpoenas and requests for production of documents to multiple state agencies including the WDE, the Office of Superintendent of Public Instruction and the Department of Administration and Information. From these subpoenas, the Committee received over one million pages of documents including a 118 gigabyte production from the Office of Superintendent of Public Instruction. The production from the Office of Superintendent of Public Instruction was divided into two folders “e-mails” and “documents.”

On October 9, 2013, the Committee retained Bruce Salzburg of the law firm Crowell and Moring LLP and Rob Jarosh and Khale Lenhart of the law firm Hirst Applegate LLP to act as Special Counsel to the Committee. The duties of Special Counsel included assisting the Committee to investigate the issues under its charge, interviewing potential witnesses at the Committee’s direction and conducting initial questioning at the Committee’s hearings.

The Committee held three days of hearings January 6 through 8, 2014. At the hearings, the Committee took over 30 hours of testimony from 16 witnesses, including Superintendent Cindy Hill and her former Instructional Leader Sheryl Lain. At the conclusion of the three days of hearings, Superintendent Hill submitted a list of 38 additional witnesses to be questioned by the Committee. The Superintendent submitted a revised list of witnesses, which again included 38 names on January 10, 2014. The Committee voted not to call any additional witnesses.

### **Overview of the Law Governing the Committee's Investigation**

As mentioned previously, the Committee was tasked with investigating issues surrounding possible misspending of federal and state education funds and mismanagement of the WDE under the leadership and direction of Superintendent of Public Instruction Cindy Hill and reporting recommendations for legislative action based on the findings of its investigation. One of those potential recommendations could be impeachment of Superintendent Hill. This section of the Report discusses the law controlling the Committee’s investigative activities and the appropriate standards for impeachment.

#### **A. Authority of the Legislature to Investigate**

The nation’s highest court “has often noted that the power to investigate is inherent in the power to make laws because a legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change.”<sup>49</sup> “The power to investigate and to do so through compulsory process plainly falls within that definition [of a legitimate legislative activity].”<sup>50</sup> The court further stated that the Speech or Debate Clause permits legislators or their agents to “conduct investigations and obtain

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<sup>49</sup> *Eastland v. United States Servicemen's Fund*, 421 U.S. 491, 503-504 (1975)

<sup>50</sup> *Id.*



information without interference from the courts....” The Tenth Circuit Court of Appeals has specifically found that voting on, deliberating on and investigating legislative matters are legitimate legislative acts.<sup>51</sup>

The Committee’s investigation of the Wyoming Department of Education, the Office of the Superintendent of Public Education and the actions of the Superintendent of Public Instruction are clearly within the sphere of legitimate legislative activity. First, the Legislature created the Department of Education and has the authority to investigate activities within an agency it has created.<sup>52</sup> Second, there are allegations that public funds were misspent in the WDE and OSPI. Given the Legislature’s role as the appropriator of public funds, it is also its duty to ensure that those funds are spent pursuant to the direction of the Legislature.<sup>53</sup> Finally, the Wyoming Constitution places the burden of determining whether certain specified officials have committed an impeachable offense to the Wyoming Legislature.<sup>54</sup> In order to determine whether an impeachable offense has occurred, the Legislature must necessarily investigate the actions of the accused official.<sup>55</sup>

Perhaps the Connecticut Supreme Court stated it best when it considered a Connecticut judge’s claim that the Connecticut House of Representatives acted improperly when it instituted an impeachment investigation without providing full due process guarantees and without establishing standards for impeachable conduct. The Court stated:

Even if we were to assume that such alleged violations would be sufficiently egregious, judicial intervention is not warranted because the plaintiff’s action is premature. Any harm, as claimed by the plaintiff, to his liberty interest in his reputation or his occupational pursuit hinges on whether the House of Representatives presents articles of impeachment and whether the Senate convicts him. Absent some allegation that the ... investigation is currently violating his rights in an egregious way that cannot be repaired by the failure of the House of Representatives to present articles of impeachment or by an acquittal by the Senate, the [investigating] committee’s actions are within the legislature’s exclusive jurisdiction.<sup>56</sup>

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<sup>51</sup> *Kamplain v. Curry Cnty. Bd. of Comm.*, 159 F.3d 1248, 1252 (10th Cir. 1998).

<sup>52</sup> *Nixon v. Adm’r of General Servs.*, 433 U.S. 425, 499 (U.S. 1977); *Watkins*, 354 U.S. 178, 200 n. 33; *Buckley v. Valeo*, 424 U.S. 1, 137-138 (1976); *Eastland*, *supra*.

<sup>53</sup> See Wyoming Constitution, Art 3, §35

<sup>54</sup> See Wyoming Constitution, Art. 3, §§ 17 & 18.

<sup>55</sup> See *Mecham v. Ariz. House of Representatives*, 162 Ariz. 267, 268 (Ariz. 1989), citing THE FEDERALIST, No. 65; What constitutes “high crimes, misdemeanors or malfeasance” is not to be determined by our inquiry, for the impeachment process is designed as a legislative “inquest into the conduct of public men.”

<sup>56</sup> *Kinsella v. Jaekle*, 475 A.2d 243; 256, 192 Conn. 704, 728 (Conn. 1984).

## **B. Impeachment Standards.**

As to impeachment of a public official, the Wyoming Constitution provides:

### **Article 3, Section 17. Power of impeachment; proceedings.**

The sole power of impeachment shall vest in the house of representatives; the concurrence of a majority of all the members being necessary to the exercise thereof. Impeachment shall be tried by the senate sitting for that purpose, and the senators shall be upon oath or affirmation to do justice according to law and evidence. When the governor is on trial, the chief justice of the supreme court shall preside. No person shall be convicted without a concurrence of two-thirds of the senators elected.

### **Article 3, Section 18. Who may be impeached.**

The governor and other state and judicial officers except justices of the peace, shall be liable to impeachment for high crimes and misdemeanors, or malfeasance in office, but judgment in such cases shall only extend to removal from office and disqualification to hold any office of honor, trust or profit under the laws of the state. The party, whether convicted or acquitted, shall, nevertheless, be liable to prosecution, trial, judgment and punishment according to law.

Given that the sole power of impeachment resides in the Wyoming House of Representatives, the Committee is composed entirely of members of the Wyoming House of Representatives.

“Neither the federal nor any state constitution gives a list or precise description of what offenses are impeachable.”<sup>57</sup> “There is no authoritative pronouncement, other than the text of the Constitution itself, regarding what constitutes an impeachable offense, and what meaning to accord to the phrase “high Crimes and Misdemeanors.”<sup>58</sup>

As noted in the same article, then Congressman Gerald R. Ford advocated an impeachable offense is “anything on which a majority of the House of Representatives can agree.”

The 1974 House Judiciary Committee Impeachment Inquiry focused on English precedents to conclude that “other high Crimes and Misdemeanors” was a phrase peculiar to impeachments, separate from criminal law, and that impeachable offenses focused on conduct damaging to the state, including, but not limited to, misapplication of funds, abuse of official power, neglect of duty, encroachment on Parliament’s prerogatives, corruption and betrayal of trust. The Arizona Supreme Court quoted Professor Tribe in describing an impeachable offense:

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<sup>57</sup> Illinois General Assembly, Research Response, Impeachable Offenses Under American Law, April 22, 1997.

<sup>58</sup> Presser, Standards for Impeachment, The Heritage Guide to the Constitution, 2012 The Heritage Foundation.

Such offenses include ‘misapplication of funds, abuse of official power, neglect of duty, encroachment on or contempt of legislative prerogatives, and corruption.’<sup>59</sup>

**i. Political Process;**

Further, because the House maintains the “sole power” of impeachment, investigation by any other body, judicial or otherwise, likely is improper.<sup>60</sup> The fact that the House may not conduct itself in the same manner as would a court or might act in a political manner does not disqualify the House or its members. In The Federalist No. 65, Alexander Hamilton was quite clear on the political, non-judicial, nature of impeachment:

[Impeachment charges] may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself. The prosecution of them, for this reason, will seldom fail to agitate the passions of the whole community, and to divide it into parties, more or less friendly or inimical, to the accused. In many cases, it will connect itself with the preexisting factions, and will enlist all their animosities, partialities, influence and interest on one side, or on the other; and in such cases there will always be the greatest danger, that the decision will be regulated more by the comparative strength of the parties than by the real demonstrations of innocence or guilt.<sup>61</sup>

A number of Courts and authorities have recognized the political nature of the impeachment process and upheld the Legislature’s power to act despite the impact that outside influences and politics might play.<sup>62 63</sup>

Early U.S. Supreme Court justices are referenced to support the conclusion that “high crimes” meant “political crimes.” Justice Story is quoted in speaking of the phrase “high Crimes and Misdemeanors.” “Political offenses are of so various and complex a character, so utterly incapable of being defined, or classified, that the task of positive legislation would be impracticable, if it were not almost absurd to attempt it.” “The implicit understanding shared by Hamilton and Justice Story was that subsequent generations would have to define on a case-by-case basis the political crimes comprising impeachable offenses to replace the federal common law of crimes that never developed.”<sup>64</sup>

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<sup>59</sup> *Mecham v. Arizona House of Representatives*, 782 P.2d 1160, 1161 (Az. 1989).

<sup>60</sup> *See Mecham*, 751 P.2d at 961.

<sup>61</sup> The Federalist, No. 65. (Bantam Classics ed. 1982)

<sup>62</sup> *See Kinsella v. Jaekle*, 192 Conn. 704 (Conn. 1984)(also citing case from New York and Texas); *Mecham*, 751 P.2d at 961; *Office of the Governor v. Select Comm. of Inquiry*, 271 Conn. 540, 858 A.2d 709, 749 (Conn. 2004)(citing 2 J. Story, Commentaries on the Constitution of the United States (1833)); Glennon, Impeachment: Lessons from the Mecham Experience, 30 Ariz. L. Review at 373.

<sup>63</sup> Although not within the scope of this Committee, senate impeachment trials are often conducted without the right of the accused to challenge the ability of any senator to hear the evidence and vote. *See e.g. Mecham*, 751 P.2d at 963 (confirming no such right in the impeachment of Arizona’s governor).

<sup>64</sup> Gerhardt, The Federal Impeachment Process, A Constitutional and Historical Analysis, 106 (2d. ed. 2000).

The political nature of impeachment is emphasized and taken a bit further by one commentator's review of Hamilton's position in the Federalist papers. "Hamilton, in fact, frankly admitted that impeachment would be seen as a partisan political weapon. Because a bill of impeachment would allege 'abuse or violation of some public trust,' it would be political by nature, its prosecution, as Alexander Hamilton explained:"

Will seldom fail to agitate the passions of the whole community, and to divide it into parties more or less friendly or inimical to the accused. In many cases it will connect itself with the pre-existing factions, and will enlist all their animosities, partialities, influence, and interest on one side or on the other; and in such cases there will always be the greatest danger that the decision will be regulated more by the comparative strength of parties than by the real demonstrations of innocence or guilt.<sup>65</sup>

While some would argue that an indictable crime is necessary, others note that it appears certain that use of the term "misdemeanors" was not intended to mean "petty crimes" as it might in today's lexicon. "At the time of the Constitutional Convention, "demeanor" meant what it still means today on elementary school report cards: behavior. 'Misdemeanor' was misbehavior."<sup>66</sup> That is not intended to say that any "misbehavior" suffices. Rather, "a consensus of scholars and the federal impeachment proceedings agree:"

The phrase "other high Crimes and Misdemeanors" consists of technical terms of art referring to "political crimes" ... [which] were not necessarily indictable crimes. Instead, "political crimes" consisted of the kinds of abuses of power or injuries to the Republic that only could be committed by public officials by virtue of the public offices or privileges they held. Although the concept "political crimes" uses the term "crimes," the phrase did not necessarily include all indictable offenses. Nor were all indictable offenses considered "political crimes."<sup>67</sup>

### **C. The Superintendent's Claim for Appointed Counsel**

Superintendent Hill's demand to be provided legal counsel is contrary to the weight of authority and Wyoming law. To begin, it should be noted that former Attorney General Greg Phillips notified Superintendent Hill that she was not entitled to representation by the Attorney General's Office. In a letter to Superintendent Hill, Attorney General Phillips explained that representation is available only in a "suit" filed against an elected official.<sup>68</sup> Attorney General Phillips cited authority showing that neither an investigation into potential grounds for impeachment nor an impeachment proceeding itself is a "suit" within the meaning of W.S. § 9-1-603. Although not mentioned by the Attorney General, and not directly applicable if

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<sup>65</sup> Neumann, *The Revival of Impeachment as a Partisan Political Weapon*, 34 *Hastings Const. L.Q.* 161, 174-175 (Winter, 2007), quoting *The Federalist* No. 65, at 381 (Alexander Hamilton) (Isaac Kramnick ed., 1987).

<sup>66</sup> See Neumann, note 9 at 172.

<sup>67</sup> *Id.*, quoting Gerhardt, *The Lessons of Impeachment History*, 67 *Geo. Wash. L. Rev.* 603, 610 (1999).

<sup>68</sup> See W.S. § 9-1-603.

impeachment proceedings are not “suits” for the purpose of W.S. § 9-1-603, W.S. § 9-1-603(a)(iii) establishes that the Attorney General’s Office must “[d]efend suits brought against state officers in their official relations, **except suits brought against them by the state.**” (emphasis added) This language certainly suggests that the Attorney General’s services are not intended to be extended to state officers whose actions are being reviewed by the Legislature, an arm of the State. In addition to W.S. § 9-1-603, W.S. § 9-1-606 allows the Attorney General to provide a defense, or provide private defense counsel at the State’s expense, to elected State executive officials and agency heads. However, W.S. § 9-1-606 requires that a defense be provided only where an official has been sued in a civil lawsuit not involving a tort action.<sup>69</sup> Together with Attorney General Phillips’ analysis, these statutes strongly indicate that Wyoming law does not contemplate extending a defense to Superintendent Hill during the Committee’s investigation. Presently, she has not been sued or otherwise formally challenged in any way or capacity. She faces only an investigation. Even if articles of impeachment are brought against her, the impeachment proceeding is not a “suit” for purposes of W.S. § 9-1-603, it is not a “civil lawsuit” for purposes of W.S. § 9-1-606 and is a proceeding instigated by an arm of the State, contrary to the intent behind W.S. § 9-1-603(a)(iii).

Superintendent Hill has pointed to no other basis upon which the Legislature or State is required to provide her with legal representation and no independent grounds for such action have been identified. The courts that have considered the issue in the context of impeachments appear to hold that an accused public official has no general right to counsel at the expense of the State or Legislature. In *Hastings v. United States*, the Federal District Court for the District of Columbia found that the United States Constitution does not require the Senate to contribute to attorney’s fees incurred by an impeached federal judge.<sup>70</sup> In *Mecham v. Arizona House of Representatives*, the Arizona Supreme Court declined to accept jurisdiction over an impeached governor’s attorney’s fees claims finding that there was no constitutional or statutory requirement that either the legislature or attorney general’s office provide a defense to the governor.<sup>71</sup> Further, the constitutional right to the effective assistance of counsel at public expense has no part in this case because that right is limited to criminal cases.<sup>72</sup> As discussed earlier, impeachment proceedings are not criminal in nature. Because the Legislature did not prevent Superintendent Hill from being represented by counsel or to prevent counsel from assisting in her defense, there appears to be no related constitutional issues at play. Finally, no authority has been found indicating that the Legislature somehow assumes a duty to provide a defense to a State official when statutes applicable to the Attorney General’s duty to defend do not provide for a defense.

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<sup>69</sup> W.S. § 9-1-606(b).

<sup>70</sup> *Hastings v. United States*, 802 F. Supp. 490, 500 (D.D.C. 1992), later remanded then dismissed on other grounds by *Hastings v. United States*, 837 F. Supp. 3 (D.D.C. 1993).

<sup>71</sup> *Mecham v. Arizona House of Representatives*, 782 P.2d 1160, 1161 (Az. 1989).

<sup>72</sup> *Hastings v. United States*, 802 F. Supp. 490 (D.D.C. 1992)(citing *Gideon v. Wainwright*, 372 U.S. 335, 9 L. Ed. 2d 799, 83 S. Ct. 792 (1963)).

## V. The Committee's Rules, Procedure and Policy

The rules of the Committee provided Superintendent Hill with procedural privileges, even though it was not required to do so. The Committee finds that the Superintendent was given more procedural protections throughout the investigatory process than she was entitled to.<sup>73</sup>

It is important to note that Superintendent Hill does not have the rights of a criminal defendant at any stage of investigation or impeachment. Impeachment proceedings are not criminal in nature.<sup>74</sup> Under the Wyoming Constitution, Superintendent Hill can be impeached for “high crimes and misdemeanors” or “malfeasance in office.”<sup>75</sup> The most common interpretation of this language is that it does not require an indictable offense. “High crimes and misdemeanors” and “malfeasance in office” are terms of art “suffused with meaning from political history which do not envision the commission of a criminal act.”<sup>76</sup> Indeed, Wyoming’s history with impeachments and removals from office indicates that no criminal conduct is required.<sup>77</sup>

Even if impeachments or legislative investigations were criminal in nature and Superintendent Hill enjoyed the full spectrum of protections offered to criminal defendants, criminal defendants do not enjoy any right to take part in, or influence, the conduct of an investigation which may lead to formal charges being filed against them. There is no case law suggesting that a person suspected of committing a crime, or an elected official suspected of committing an impeachable offense, is entitled to take part in an investigation designed to determine if there has been wrongdoing. Certainly, after the investigation and upon the bringing of charges or articles of impeachment, the accused is afforded certain rights aimed at allowing them to confront the evidence and prove their innocence. Prior to that time, however, some scholars have suggested that the role of a legislature’s house of representatives parallels that of a grand jury.<sup>78</sup> Grand juries consider only the evidence presented by prosecutors and, from that evidence, decide whether to indict a defendant. Only upon indictment and the consequential imposition of a burden to defend do the full protections of criminal procedure apply. In this case, the Investigatory Committee is acting like a grand jury. No action taken by the Committee can cause Superintendent Hill to be removed from office or to be otherwise legally burdened. Like a grand jury, the Committee can only collect and view the evidence to determine if there are grounds for instigating formal proceedings. Technically speaking, until such time as the House votes to formally bring articles of impeachment, there is nothing for Superintendent Hill to

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<sup>73</sup> See Final Report of the Special Investigative Committee of the Illinois House of Representatives into Allegations Against Governor Rod. R. Blagojevich, January 8, 2009, p. 6.

<sup>74</sup> See *Mecham v. Gordon*, 751 P.2d 957, 961-963 (Az. 1988) (Expressing the view of most federal and state courts that have considered the issue: “The text [of the constitutional provisions regarding impeachment] confirm the lessons of history: nomenclature aside, trial in the Senate is not the equivalent of a criminal trial within the judicial system”). The Arizona court’s holding is particularly relevant since Arizona’s impeachment provisions are very similar to Wyoming’s.

<sup>75</sup> See Wyo. Const. Art. 3, Section 18.

<sup>76</sup> Glennon, *Impeachment: Lessons from the Mecham Experience*, 30 Ariz. L. Review 372, 380 (1988).

<sup>77</sup> LSO Impeachment Standards Memo, p. 10-15.

<sup>78</sup> Glennon, *Impeachment: Lessons from the Mecham Experience*, 30 Ariz. L. Review at 372.



defend herself against. And, until articles of impeachment are entered against her, Superintendent Hill's rights and status as Superintendent of Public Instruction are unthreatened.

The Illinois Legislature shares a similar view. When the Illinois House of Representatives investigated the factual grounds for impeaching Illinois Governor Rod Blagojevich, the investigating committee's final report made clear that Governor Blagojevich was not entitled to the various procedural protections the House had granted him.<sup>79</sup> The extension of such rights was gratuitous. Wyoming's only impeachment indicates that Wyoming's lawmakers also have historically understood the limited rights of a public official under investigation. In 1897, the Wyoming House of Representatives impeached District Judge William Metz. The House Journal from the 1897 legislative session includes the report of the special committee appointed to investigate Judge Metz and states that the committee allowed the judge to attend a committee hearing and testify despite the fact that "Judge Metz was not entitled to appear before [the] committee as a matter of right."<sup>80</sup>

When the Arizona Legislature impeached its governor, the Arizona House of Representatives adopted rules to guide the evidentiary hearings held to investigate impeachment grounds which are substantially similar to the procedural rules adopted by the Committee. Despite multiple cases before the Arizona Supreme Court concerning the impeachment of Governor Meacham, the Arizona Court declined to rule that these rules did not provide the Governor with any procedural protections he may be afforded, if any.

The Committee afforded the Superintendent procedural protections in a desire to have a fair hearing of all relevant and available evidence and to conduct the most thorough investigation possible. Superintendent Hill was allowed to appear before the Committee in August 2013 and have her Deputy Superintendent John Masters, an attorney, comment on the Committee's proposed rules. The Superintendent was allowed to attend all public meetings of the Committee. The Superintendent was allowed to submit written questions at multiple stages during the Committee's hearings. The Superintendent was allowed to introduce documentary evidence before the Committee. The Superintendent and Mr. Masters were allowed to attend the executive sessions of the Committee hearings and ask questions of the witnesses during executive session. Finally, the Superintendent was allowed to provide a list of potential additional witnesses for the Committee to consider.

During the course of the Committee's 10-month investigation, the Committee amended its rules on two occasions. The first rules amendment allowed the Superintendent and her deputy to be present and participate during confidential, executive sessions of the Committee's Hearings. The second rule amendment allowed for the issuance of this Report without providing the Superintendent 15 days to respond in writing to the Draft Report and also concluded the work of the Committee without holding additional public meetings. The amendments to the Committee's rules in no way conferred any right to the Superintendent, or infringed on any right she may have

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<sup>79</sup> Final Report of the Special Investigative Committee, Illinois 95<sup>th</sup> General Assembly House of Representatives, p.6, January 8, 2009.

<sup>80</sup> House Committee report, 1897 Wyo. House Journal at 188.

possessed. The Committee adopted rules to provide internal governance for the efficient completion of the Committee's work. The Committee's rules were self-imposed and as such amendable at any time at the will of the Committee. A legislative body has a continuous power to determine its own rules of proceeding. It can always be exercised by the legislative body "and is absolute and beyond the challenge of any body or tribunal if the rule does not ignore constitutional restraints or violate fundamental rights."<sup>81</sup> A legislative body "cannot tie its own hands by establishing unchangeable rules. It may adopt and change procedure at any time and with no other notice than the rule may require."<sup>82</sup> As established above, the Superintendent did not possess a fundamental right to participate in any manner in the Committee's investigation. Therefore, the Committee was free to amend its rules as the Committee deemed appropriate.

The Committee finds that these procedural protections it afforded to Superintendent Hill far exceed any protections she may have been entitled to during this process, if any.

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<sup>81</sup> See Mason's Manual of Legislative Procedures, Section 13, Paragraph 3. (citing *North Dakota ex rel. Spaeth v. Meiers*, 403 N.W.2d 392 (N.D. 1987); *Davis v. Thompson*, 721 P.2d 789 (Okla. 1986); *South Carolina ex rel. Coleman v. Lewis*, 186 S.E. 625 (S.C. 1936).

<sup>82</sup> *Id.* at Sec. 13, Paragraph 4 (citing *French v. California Senate*, 80 P. 1031 (Cal. 1905).

**APPENDIX II  
FINANCIAL FINDINGS RESULTING FROM SIG GRANT INVOLVEMENT WITH FREMONT  
#38 SCHOOL DISTRICT**

A summary of financial findings associated with expenditures for resources in connection with a program consisting primarily of WYR (Wyoming Read Instructional Program) are presented in this narrative. The focus of this report concerns spending that occurred from various budgets within the Department of Education primarily during the 2011-2012 school year, and that approximately coincides with the first year of the SIG (School Improvement Grant) that was awarded to Fremont #38 School District. Where practical, sources of information resulting from interviews and subpoenaed material will be referenced.

It is emphasized that not all Department spending on behalf of Fremont #38 is considered in this analysis, but rather spending on the program that occurred in budgets that appear to have little or nothing to do with the respective purposes of these selected budgets.

**Financial Findings**

As alluded to in the Report, staff needs that were promised in connection with the new Fremont #38 program were unfunded and unbudgeted. Consequently, a number of avenues were used to fill these financial gaps. First, available openings in the Statewide System of Support division of WDE (because of excessive turnover) freed up \$140,000 to partially pay Ms. Brummond and Ms. Brutsman. This deficit was ultimately filled by a share of the SIG grant in the amount of \$134,000 and was presumably used to pay for a portion of Ms. Brutsman and Ms. Brummond's contract obligations. In addition, other WDE budgets that were appropriated by the Legislature and intended for other purposes were inappropriately diverted to pay consultant costs as well as travel costs for WDE employees.

In total, the 10-month contracts executed amounted to nearly a quarter of a million dollars. Ms. Brummond and Ms. Brutsman received contracts for \$93,333 each and Ms. Leshner received a contract of \$46,666. The latter's contract was for services performed in providing WEN (Wyoming Educational Network) classes one time per week for the 16 weeks in which the reading program was to be conducted.

Table 1 represents the intended means of payment as noted on Requisition Forms at the time of retaining Ms. Leshner, Brummond and Brutsman on contract.

**TABLE 1**

| PLANNED METHOD OF PAYMENT OF CONTRACTS<br>REPORTED REQUISITION FORM |            |                           |               |                               |           |
|---|------------|---------------------------|---------------|-------------------------------|-----------|
| BUDGET<br>TITLE   | Assessment | Teacher/leader<br>Quality | Accreditation | Title 1 School<br>Improvement | TOTALS    |
| BUDGET No.  | 6105       | 6106                      | 6108          | 6357                          |           |
| BRUTSMAN  |            |                           | \$23,333      | \$70,000                      | \$93,333  |
|   |            |                           |               |                               |           |
| BRUMMOND  |            |                           | \$23,333      | \$70,000                      | \$93,333  |
|   |            |                           |               |                               |           |
| LESHER  | \$15,556   | \$15,556                  | \$15,556      |                               | \$46,667  |
|   |            |                           |               |                               |           |
| TOTALS  | \$15,556   | \$15,556                  | \$62,222      | \$140,000                     | \$233,333 |

(Source: FR-WDE-002142, 54 and 65)

Budgets with numbers 6105, 6106 and 6108 appear to have nothing to do with coaching, tutoring or teaching duties connected to Fremont #38 and appear to have been used because there was no applicable budget for the program. Although there was controversy in using budget 6357, Title 1 School Improvement because of the qualifications of the recipients, it at least was related to school improvement. In addition, approximately \$134,000 from the Federal SIG grant was allotted to cover the amount used from this budget. The remaining amount of \$93,000 in intended expenditures appears to have been inconsistent with the intended use of these budgets.

As stated above, the purchase requisitions provide evidence as to the intent concerning the means of financing these contracts. Additional information is learned by looking at actual expenditures that occurred over the ten-month span during which the contracts were in place. Table 2 summarizes a partial listing of how expenditures were drawn from various accounts. This data is extracted from the Budget Management System for the Department of Education.

TABLE 2

| EXPENDITURES OCCURRING IN SELECTED BUDGETS |                |                           |                 |                            |                 |
|--|----------------|---------------------------|-----------------|----------------------------|-----------------|
|  | Assessment     | Teacher/leader<br>Quality | Accreditation   | State Pers.<br>Development | Totals          |
| BUDGET NO.                                 | 6105           | 6106                      | 6108            | 6321                       |                 |
| BRUTSMAN                                   |                |                           | \$6,833         | \$5,381                    | <b>\$12,214</b> |
|  |                |                           |                 |                            |                 |
| BRUMMOND                                   |                |                           | \$9,859         | \$1,284                    | <b>\$11,143</b> |
|  |                |                           |                 |                            |                 |
| LESHER                                     | \$8,722        | \$10,711                  | \$2,690         |                            | <b>\$22,123</b> |
|  |                |                           |                 |                            |                 |
| MOCKLEMANN                                 |                |                           | \$3,266         |                            | <b>\$3,266</b>  |
| PROF. SER.<br>TOT.                         | \$8,722        | \$10,711                  | \$22,648        | \$6,665                    |                 |
| TRAVEL (est)                               |                |                           | \$12,000        |                            |                 |
| <b>TOTALS</b>                              | <b>\$8,722</b> | <b>\$10,711</b>           | <b>\$34,648</b> | <b>\$6,665</b>             | <b>\$60,746</b> |

(Source: FR-WDE-000128 to 000466 and FR-WDE-000724 to 001570)

It seems apparent that none of the budgets identified in Table 2 are appropriate sources of finance in connection with the SIG program in Fremont #38. Much of the spending that took place in budget 6108, accreditation, is documented as being for WDE staff travel expenditures as directed by Sheryl Lain. (FR- WDE- 724 to 1570) There is every likelihood that expenditures for travel are actually higher than the \$12,000 identified in Table 2. In fact thousands of dollars more was apparently extracted from budget 6108 to pay for various other unfunded initiatives of WDE during the same time period, but was not part of the Fremont #38 reading program.

This data, extracted from the Budget Management System, represents only a portion of the total expenditures traced to these contracts. Expenditure summaries that were examined pertaining to Ms. Leshner, Brummond and Brutsmann represented only a portion of the monthly recaps. For example, the Budget Management system data that has been provided only covers six months of the ten-month contract for Ms. Leshner and Ms. Brummond and seven months of the 10-month contract pertaining to Ms. Brutsmann. Accordingly, the numbers in Table 2 can be regarded as minimums. Other expenditures that were financed from Title 1 school improvement budgets are not included in this analysis.