

# GOVERNANCE OF EDUCATION IN CALIFORNIA

## STATE-LEVEL EXECUTIVE BRANCH

### A Compilation of Perspectives and Recommendations

#### Who Is Accountable for Public Education in the State of California?

- Is it the local school district’s governing board?
- Is it the state legislature and its committees that pass legislation on education?
- Is it state commissions and state agencies that impact the schools with their decisions?
- Is it the elected state superintendent of public instruction (SPI) and the Department of Education he/she directs?
- Is it the appointed state Board of Education (SBE) and the policies it determines?
- Is it the governor and the secretary for education he/she appoints?
- Is it all of us who make decisions at the polls about education ballot measures, about who gets elected and the education programs espoused by the candidates?

Peter Schrag, in his book *The Final Test: The Battle for Adequacy in America’s Schools*, quotes Thomas B. Timar, who studies school governance issues at the University of California at Riverside, when he describes large states with large school districts like Los Angeles as having state or local school governance structures that are “neither rational, nor coherent, nor functional.” Timar claims that “In California, it thus may be hard to execute any effective remedy without major restructuring because it is not possible to determine just who the ‘state’ is.” Schrag goes on to say “What may be necessary, therefore, is ‘institutional reconfiguration,’ a gentle phrase for tearing up the system and radically rebuilding it from the top down (or perhaps better yet, from the children and teachers up).”

#### Governance Principles—Separation and Balance

The Legislative Analyst’s Office writes about the separation and balance of powers in its 1999 publication *A K-12 Master Plan: Starting the Process* as follows: “The structure of American government is based on separation of powers and balance of power. Separation of power disperses power to the three branches of government and ensures that the branches are accountable to the voters and to the other branches. Separation of powers assigns governmental power to an executive, a legislative, and a judicial branch. . . . Separation of powers among levels of government is a second way to disperse power. . . . To ensure that no single branch dominates the others, balanced government provides checks and balances on each level and branch. These checks include things like vetoes and overrides, referendums, and legislative oversight (within or between levels of government)”

#### Who Governs Public Education on the State Level?

(The following comments are excerpted from the Legislative Analyst’s publication *A K-12 Master Plan: Starting the Process*, unless otherwise noted.)

#### **The Role of the State Superintendent (SPI) and the State Board of Education (SBE)**

The state constitution disperses state power to more independent executive officers than does the federal constitution. The SPI acts as the primary executive over state K-12 education. The SPI is elected as a

nonpartisan statewide officer, an arrangement which makes the superintendent accountable to voters. This accountability to voters gives the position a measure of independence from the governor.

The governor retains significant power over many executive decisions. Through his or her power in the legislative and budget process, the governor can shape state policy toward schools. In addition, state statutes require the governor to appoint members of the state Board of Education (SBE). State statutes and court precedents place the SBE as the policy setting agency and the SPI as the executive responsible for carrying out the board's policies. This diffusion of power introduces many different views on education issues. Diffuse power tends to inhibit major changes in education policy unless there is broad consensus that such changes are necessary. This increases the stability of the system.

On the other hand this diffusion of power can create conflict and confusion about state policy when differences of opinion arise among the various entities. For example, disagreements between the SBE and the SPI (can) create major difficulties in local implementation of new programs authorized by the legislature "...The constitutional issue surrounding the role of the SPI and the SBE hinges on the value of separation [the SPI's independent voice on education] compared to the importance of a unified state education policy and implementation structure. Is the diffusion of power helping to 'balance' powers in Sacramento or is it inhibiting the state from sending clear messages to districts and schools about state education policy?"

*Question to think about:* Do you believe that diffusion of power is "balancing" state education policy or "inhibiting" clear messages to local districts and schools?

### **Provisions in the California Constitution about the State's Role in Education Governance**

A briefing paper prepared for the working groups of the Joint Committee to Develop a Master Plan for Education outlines legal aspects of the balance between state and local control: "Article IX, Section 5, of California's Constitution promises a free public school system: 'The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district . . . .' The fourteenth amendment of the U.S. Constitution, commonly called the 'equal protection clause,' requires that states deliver their promises on equal terms to all persons. California's constitution reflects the fourteenth amendment, and has been interpreted through case law to deem education a fundamental interest."

Litigation (*Serrano v. Priest* (1971,1976); *Butt* (1990), *Daniel v. State of California* (July 1999); *Williams et al. v. State of California* (May 2000) acclaims the state's ultimate responsibility for its public education system. Hence, with respect to K-12 education, California's constitution does not allow state government to relinquish to local authorities its ultimate responsibility to provide a free and equitable public education. (See Legal Constraints on Local Control on pages 31-33 in this guide for a fuller description.)

The Legislative Analyst notes that "The State Constitution grants broad state authority over K-12 issues, but no guarantee of local control. The constitution does not create school districts or guarantee any level of autonomy in the operation of local schools. It disperses K-12 authority among many officials, including the SPI, the Legislature and the Governor. It separates control over school financing from program responsibilities. The constitution is silent, however, about the duties of [an elected SPI and an SBE appointed by the Governor] and the relationship between these two entities . . . current law directs the

Governor to . . . make the SBE responsible for ‘all questions of policy within its powers’ while the SPI is charged with ‘executing the policies that have been decided upon by the board’ . . .” (LAO, *A K-12 Master Plan: Starting the Process*, pages \_\_\_\_).”

The LAO goes on to say that “The Constitution contains several provisions that constrain the Legislature’s flexibility in addressing K-12 education issues. . . . for instance, the SPI is elected independently from the Governor.” “State statutes present a formidable presence in educational policy making. State policy, as expressed through the Education Code and the state budget, has resulted in an extremely complex policy and budget environment for districts, schools and teachers.”

A related discussion is the impact of the constitutional framework on local authority. Again in the same publication, the LAO notes that financial control may ultimately lead to a significantly greater role [for the state] in program and policy.

### **The LAO’s Historical Footnotes on California’s Governance of Education:**

- The Constitution has left to state statutes almost all details regarding the design of the (education) system.
- Two specific state mandates are included in the Constitution: the state is required to (1) provide a minimum of \$120 per pupil, and (2) provide free textbooks for use in grades 1-8.
- The Constitution also requires an elected SPI, a state Board of Education, and county offices of education.
- The “harmonious decades” were so-called because the SPI initially took office as a gubernatorial appointee, and then later became an incumbent candidate for the office; election, therefore, was usually secure. Essentially, the governor was the major player in determining who became the elected SPI.
- In more recent times, the relationship between the SPI and the governor, and that between the SBE and the SPI have not always been “harmonious.”
- Three propositions over a period of four decades included provisions to have the SPI appointed rather than elected. All were defeated.
- Total votes cast for each state office compared with the average number of votes cast for SPI in 1994 and 1998 show that substantially fewer voters cast votes for any candidate for SPI than voted for other state elected positions.
- An unintended consequence of Proposition 13 was the increase of centralization of power for public education in the governor’s office.
- State statutes since 1988 have significantly increased state regulation of schools, most notably in school financing, and in establishing categorical funds.
- “For the most part, the development of the current state system was not guided by a long range state strategy.” (Page 13)

**What Systems Do Other States Use to Govern Their Education Establishment?**

<b>Education Governance Structures in the Fifty States</b>			
<p><b>STRUCTURE ONE</b> (12 states)</p> <p>Governor appoints SBE; SBE appoints the CSSO (Chief State School Officer)</p> <p>Alaska Arkansas Connecticut Illinois Kentucky Maryland Massachusetts Missouri New Hampshire Rhode Island Vermont West Virginia</p>	<p><b>STRUCTURE TWO</b> (8 states)</p> <p>SBE is elected; SBE appoints the CSSO</p> <p>Alabama Colorado Hawaii Kansas Michigan Nebraska Nevada Utah</p>	<p><b>STRUCTURE THREE</b> (11 states)</p> <p>Governor appoints SBE; CSSO is elected</p> <p>Arizona California Georgia Idaho Indiana Montana North Carolina North Dakota Oklahoma Oregon Wyoming</p>	<p><b>STRUCTURE FOUR</b> (9 states)</p> <p>Governor appoints both the SBE and the CSSO</p> <p>Delaware Iowa Maine Minnesota New Jersey Pennsylvania South Dakota Tennessee Virginia</p>
<p>States that do not conform to one of the four basic structures:</p> <ul style="list-style-type: none"> <li>■ <b>Florida</b> – The state board of education (SBE) consists of seven elected cabinet members: the governor, secretary of state, attorney general, comptroller, treasurer, commissioner of agriculture and chief state school officer (CSSO).</li> <li>■ <b>Louisiana</b> – Eight state board members elected, and the governor appoints three members. The SBE appoints the CSSO.</li> <li>■ <b>Mississippi</b> – The governor appoints five SBE members, while the lieutenant governor and speaker of the house each appoints two members. The SBE appoints the CSSO.</li> <li>■ <b>New Mexico</b> – Ten SBE members are elected, and the governor appoints five. The SBE appoints the CSSO.</li> <li>■ <b>New York</b> – The state legislature elects SBE members, and the SBE appoints the CSSO.</li> <li>■ <b>Ohio</b> – State board is a hybrid, with 11 members elected and eight appointed by the governor with the advice and consent of the senate. CSSO appointed by SBE.</li> <li>■ <b>South Carolina</b> – Legislative delegations elect 16 SBE members; governor appoints one SBE member. CSSO is elected.</li> <li>■ <b>Texas</b> – The SBE is elected, and the governor appoints the CSSO.</li> <li>■ <b>Washington</b> – Local school boards elect SBE members, and the citizenry elects the CSSO.</li> <li>■ <b>Wisconsin</b> – There is no SBE, and the CSSO is elected.</li> </ul> <p><b>Source: State Education Governance Structures. Denver, CO: Education Commission of the States, 1993.</b></p> <p>Updated 1998.</p>			

## **Major Proposals for Changes in State-Level Governance**

There have been three major efforts in recent times to change the state governance system for public education. Governance reform proposals are currently being revisited as the state attempts to cope with its serious budget deficit.

In reality, it is impossible to separate governance and funding issues; if a change occurs in one, changes must occur in the other. However, since there are so many stakeholders in the education enterprise, making changes in either governance or funding is fraught with “turf” battles.

Despite the interrelatedness of funding and governance, it is still important to examine state-level governance questions separately to determine what changes might bring about a more effective and efficient public education system for California students.

During the course of this study, professionals and other experts in the field of education were interviewed by committee members and asked to describe their ideal governance model. It is indicative of the complexity of the task that there was no consensus among them. Their responses ranged from keeping the system as it is, to having an appointed SPI, to abolishing the position of SPI, to changing the role of the state board of education. Some noted the ultimate responsibility of the state to assure equity across the system, while advocating the return of some real control and decision-making responsibility and authority to local school boards. The last was further seen as a way of encouraging more public participation, since decision-making would be more local, and, therefore, more accessible. It should also be noted that some of those interviewed believed that shifting more responsibility and authority back to locally-elected school boards could ultimately result in more local engagement in school board elections, on the theory that more voters would see a direct relationship between their vote and the quality of their local schools.

Major recommendations for change in state governance of education are found in the following documents:

- The California Constitution Revision Commission, *Final Report and Recommendations*, 1996
- The Legislative Analyst’s Office, *A K-12 Master Plan: Starting the Process*, 1999
- The Master Plan Governance Working Group (the Group), *Final Report*, 2001
- The Joint Committee to Develop a Master Plan for Education, *The California Master Plan for Education*, 2002.

### **Recommendations of the California Constitution Revision Commission, 1994-96**

- Recommendation 2: The superintendent of public instruction . . . should be appointed by the governor instead of being elected. The appointment should be subject to legislative confirmation.
- Recommendation 23: Make the governor responsible for K-12 education. The existence, role and responsibilities of the superintendent of public instruction should be outlined in statute rather than in the constitution. The governor should be responsible for the state’s role in the elementary and secondary school system.
- Recommendation 24: The role of the state Board of Education should be determined by statute. Constitutional references to the state Board of Education should be deleted.

## Recommendations of the Legislative Analyst’s Office

The Legislative Analyst’s Office encouraged the legislature to develop a Master Plan for K-12 Education. The research for this work led the LAO to the conclusion that fundamental changes were necessary in state education governance. The LAO articulated the value of a governance system that recognizes the importance of both local school districts and the state, and built on the relative strengths of each in a coordinated way. The document examined “The State Role Under a Local Control Policy” as follows:

### Restructure State-level Governance

State governance has a number of problem areas resulting from excessive separation of policy responsibilities. For instance, the state Superintendent of Public Instruction (SPI) and State Board of Education (SBE) are separate entities that have a number of overlapping responsibilities. This results in conflict over “turf” and power. The state could restructure the SPI’s scope of responsibilities in a way that gives a Governor-appointed executive significant implementation and policy responsibilities, yet maximizes the voice of the elected SPI to promote system accountability and local control. Consistent with these changes, the state could recast the SBE into a long-term policy board, monitoring program effectiveness and acting as a sounding board for major state program decisions.

### State Responsibilities under a Policy of Local Control:

- Governance: Strengthen local school boards and ensure adequate “checks” in local governance.
- . . . a policy of *local* control over decision-making still requires a *major* state role . . . one that requires the state to learn how to *support* the development of high quality local programs rather than *dictate* the way schools should work.
- Refine the Role of the SPI and the SBE: With an elected SPI as the lead education executive, the rationale for a strong state board is not clear . . . As a result, the statutory relationship between the SPI and SBE needs to be reviewed . . . The SPI’s administrative authority could be strengthened, for instance. The board’s role in long-term planning and oversight of local programs could be enhanced. In this way, the state could point the two constitutional agencies into more complementary, rather than conflicting roles.

Because [the LAO’s] recommended plan emphasizes local control, [its] suggested solution to this issue assumes a smaller state role in the details of K-12 decision making. In addition, [its] emphasis on reforms that can occur through statutory changes requires defining new complementary roles for the SBE and SPI. . . .

## Working Group Recommendations and Rationale

(Excerpted from pages 8-10 of the Governance Working Group’s *Final Report*. The full report can be found online at [www.sen.ca.gov/masterplan/](http://www.sen.ca.gov/masterplan/))

1. Accountability to California citizens for the operation of K-12 public education at large, and ultimate responsibility for the delivery of education to California’s K-12 public education students in particular, should reside in the office of the Governor. The Governor should appoint a Chief State Officer, to carry out, on behalf of the Governor, the following functions: establishing learning expectations, providing an accountability system of measurement (including specific technical assistance), and apportioning resources, and to serve as the Director of the Department of Education.

Rationale: The majority of the members of the Governance Working Group shared a strong view of the current structural split between responsibility/authority and accountability at the state level. Given the following two factors, 1) The state-level functions of education are performed by multiple state entities, and 2) “The Governor has primary control over K-12 education decision-making because the governor both introduces the state budget, which recommends policy changes for education, and is nearly always the final arbiter on the budget and all other expenditure measures as a result of the line-item veto authority....” it, therefore, seemed reasonable to the Group for accountability to be assigned to the Governor’s office.

The linkage between the K-12 management function, currently residing in the California Department of Education (CDE) under the direction of the independently elected SPI, and the governor’s responsibilities, was viewed by most members of the Group as essential. The Department of Education is responsible for so many crucial education delivery functions that failure to perform these functions satisfactorily has led often to “blame games” between the SPI and the governor, not to remediation.

The Group discussed whether the public would become sufficiently informed regarding issues of alignment and accountability to cast a truly informed vote on any constitutional amendment that would 1) propose eliminating the SPI as an elected officer of the state, and 2) make it a position that is appointed by the governor. A minority view was expressed consistently that the elected office of the SPI was an essential independent voice on education matters; “tension” between the governor and the SPI was seen as “healthy” for education decision-making.

Group members agreed that there was more than one way to reach the goal of linking education functions to the governor. For example, the addition of a gubernatorially appointed, cabinet level officer to direct the CDE was one of them.

2. The Governor should be accountable for all K-12 state level education agencies.

Rationale: State-level alignment should be inclusive of all state-level entities in order to underscore accountability and enable coordination.

3. The separate executive director and staff of the State Board within the Department of Education should be eliminated.

Rationale: When direction of the Department of Education as a whole is aligned with the governor, dual staff will be eliminated.

4. State Board of Education members should be drawn from and represent distinct geographical regions, and the functions of the State Board should be limited to policy matters.

Rationale: The needs of California’s citizens, particularly those that rise from the diversity and regional variation of this state, will be better met if the policy-recommending body of K-12 education consists of representatives from all regions of the state.

## **Final Recommendations of the Joint Committee for the Master Plan for Education**

Readers are referred here to the final report and recommendations of the Joint Committee to Develop a

Master Plan for Education. That publication, titled *The California Master Plan for Education*, was distributed to all local Leagues in August 2004. Specifically, readers are referred to Recommendations 26, 27, 29, 39, 41, 44, 48, and 56.1 on pages 92- 94, 96, 107-109, 111-113, 115, 133, 137, 149-150 and 151.

The recommendations can also be found online in their complete form at:

[http://www.sen.ca.gov/ftp/SEN/COMMITTEE/JOINT/MASTER\\_PLAN/\\_home/020909\\_FINAL\\_MASTER\\_PLAN\\_DOCUMENTS/2002\\_MP\\_SUMMARY\\_RECOMMENDATIONS.PDF](http://www.sen.ca.gov/ftp/SEN/COMMITTEE/JOINT/MASTER_PLAN/_home/020909_FINAL_MASTER_PLAN_DOCUMENTS/2002_MP_SUMMARY_RECOMMENDATIONS.PDF).

## **A Comparison of the Various Recommendations for State-Level Governance**

### **The State Superintendent of Schools**

1. California Constitution Revision Commission, Recommendation 2: The superintendent of public instruction should be appointed by the governor, subject to senate confirmation. . . . The existence, role, and responsibilities of the SPI should be outlined in statute rather than in the constitution.
2. LAO: Maximize the voice of the SPI to promote system accountability and local control.
3. Master Plan Governance Working Group: A proposal for a constitutional amendment to have the SPI appointed by the governor was rejected. “The idea of having the superintendent be appointed by the State Board initially engendered some support, then was largely rejected.” K-12 State-level Recommendation 1. A minority position within the Group favored continuing to have an elected office responsible for K-12 education.
4. The California Master Plan for Education Recommendation 27: The Superintendent of Public Instruction should remain an elected position and be responsible for all aspects of accountability for public education other than fiscal accountability. The Superintendent should exercise the following functions...
  - Provide for and manage a comprehensive system of student and institutional measurement . . . ;
  - Ensure compliance with special education and civil rights law . . . ;
  - Monitor the impact of state policy on the success of local K-12 programs . . . ;
  - Monitor the implementation of state and federal programs . . . [to meet] needs of all targeted students;
  - Provide public identification of schools that have failed . . . ;
  - Define and implement the processes for intervention in schools that fail . . . ;
  - Serve as an advisor to the Legislature and the Governor and as an advocate to promote the State’s Master Plan . . . and system accountability;
  - Act as the independent spokesperson of California’s populace, and of students . . . .
5. Letter of Dissent from Assemblymember Virginia Strom-Martin, included as Attachment A in the Master Plan for Education, stated: “. . . I do not agree with redefining the Superintendent of Public Instruction’s (SPI) role as one of overseer of accountability (non-fiscal).”

### **The Governor**

1. California Constitution Revision Commission, Recommendation 23. Governor responsible for K-12 education.
2. LAO: No specific recommendation, but an in depth discussion of the overlapping roles of state level entities.

### 3. Master Plan Governance Working Group:

Recommendation 1: Accountability to California citizens for the operations of K-12 education at large . . . ultimate responsibility for delivery of education to California's K-12 public education students . . . should both reside in the Office of the Governor.

Recommendation 2: The Governor should be accountable for all K-12 education agencies.

### 4. The California Master Plan for Education, Recommendation 26: Authority over the operations of PreK-12 public education system at large, and ultimate responsibility for the delivery of education to California's PreK-12 public education students in particular, should both reside within the Office of the Governor. The Office of the Governor should have the authority to . . . :

- Apportion resources to schools to support teaching and learning . . . ;
- Manage the state financial accountability program and school district fiscal audit reviews;
- Establish education standards and other learning expectations for students and a process of periodic review and modification . . . ;
- Adopt K-8 textbooks (a function constitutionally assigned to the State Board of Education);
- Establish developmentally appropriate program and operating standards for early childhood education and require continuity between academic guidelines, standards and curricula for preschool and kindergarten;
- Administer school improvement programs; and
- Promote an understanding of effective uses of data to improve student learning.

### **The Secretary for Education**

1. Constitution Revision Commission: No recommendations
2. LAO: Give the Governor-appointed, cabinet level executive significant implementation and policy responsibilities, similar to those of other cabinet officers.
3. Master Plan Governance Working Group, Recommendation 1: The Governor should appoint a Chief State Schools Officer to carry out the following functions:
  - Establish learning expectations
  - Provide an accountability system of measurement
  - Apportion resources
  - Serve as the Director of the Department of Education.
4. The California Master Plan for Education, Recommendation 26.1: The Governor should appoint a cabinet-level Chief Education Officer to carry out . . . all state level operations, management and programmatic functions, and to serve as the Director of the Department of Education.

### **The State Board of Education**

1. Constitution Revision Commission: The role of the State Board of Education should be determined by statute. Constitutional references to the SBE should be deleted.
2. LAO: Recast the SBE into more of a long-term policy board, for monitoring the implementation and effectiveness of state and federal programs, developing and recommending a comprehensive plan for the state administration of the K-12 programs and acting as a sounding board for major state program decisions.

3. Master Plan Governance Working Group, Recommendations 3 and 4:  
The separate executive director and staff of the SBE in the DOE should be eliminated. The SBE members should be drawn from and represent distinct geographical regions, and the functions of the State Board should be limited to policy matters.
4. The California Master Plan for Education, Recommendations 26.2, 26.3:  
The Governor should continue to appoint, with the approval of the Senate, the State Board of Education. The members should be drawn from and represent distinct geographical areas, and should reflect the ethnic and gender diversity of the state's populace. The functions of the SBE should be limited to state policy measures specified by the Legislature.

The separate director and staff of the SBE within the DOE should be eliminated.

### **California Education Commission (CEC)**

(In July 2004, the CEC had not yet been activated or funded. No recommendations in the Constitution Revision Commission's *Final Report and Recommendations*, the LAO's *A K-12 Master Plan: Starting the Process*, or the Master Plan Governance Working Group's *Final Report*.)

#### The California Master Plan for Education, Recommendations 39-39.3:

The Legislature and Governor should immediately create a new California Education Commission (CEC). The CEC should have initial responsibility for planning, coordination, and analysis that encompasses preschool and K-12 education, as well as the interface between K-12 and postsecondary education.

39.1: The Commission's primary functions should be:

- Providing long-range analysis and planning for meeting the educational needs of all Californians;
- Providing policy and fiscal advice . . .;
- Serving as California's statewide education data repository;
- Evaluating the extent to which all public education institutions are operating consistent with state policy priorities;
- Advising the Legislature and the Governor on potential and actual impacts of major education policy proposals or initiatives;
- Coordinating statewide articulation of curriculum and assessment between the PreK-12 and postsecondary education sectors;
- Providing long-term planning for the development of joint and other shared use of facilities and programs between the K-12 and postsecondary education entities;
- Sponsoring and directing inter-segmental programs that benefit students making the transition from secondary school to college and university; and
- Coordinating outreach activities among PreK-12 schools and postsecondary education and work-sector entities.

### **California Department of Education (CDE)**

1. Constitution Revision Commission: No recommendations
2. LAO: No specific recommendations
3. Master Plan Governance Working Group Recommendation 1 and rationale: The Chief State Schools Officer (a cabinet level position in the Governor's office) should serve as director of the Department of Education.

4. The California Master Plan for Education, Recommendation 26.1: Chief Education Officer (cabinet-level position appointed by the Governor) serves as Director of the Department of Education.

*When Americans grow dissatisfied with public schools, they often blame the way they are governed. Current policy talk about restructuring, choice and accountability for reaching standards is a recent episode in a long tradition of governance reforms going back a century and a half. Governance reforms occupy a special place in the spectrum of planned changes in education, for governance is intimately involved with the how and why as well as the what of public schooling.*

Thomas Timar and David Tyack, *The Invisible Hand of Ideology; Perspectives from History of School Governance*, January 1999

