Resolving Disputes without a Lawyer

Although we work within the structures set in state legislatures and constitutions, state education attorneys generally do not have much say about state education governance. We may become involved if legislative acts are challenged. For example, there may be litigation about the legislature’s ability to remove duties from an elected superintendent—e.g., Powers v. State, 318 P.3d 300, (Wyo. 2014). But more regularly, I am asked which state education authority has authority for program X or decision Y.

In Wyoming, an elected superintendent of public instruction is the chief state school officer and runs the Wyoming Department of Education. We also have an independent, gubernatorially appointed state board with one contract staff member. The legislature may assign duties to either entity, but ultimately, department staff will likely perform the necessary work.

In that environment, it is natural to ask—particularly if the superintendent and board disagree—who is in charge? Who gets to decide the many policy matters that form the fabric of state education governance? Sometimes, state officials ask the attorney to resolve that question.

There is not always a straightforward answer. I realized early in my legal career that a lawyer’s business is human conflict: preventing it if possible, resolving it if isn’t. Helping individuals navigate government systems like bankruptcy, for example, is an effort to resolve conflict between creditors and debtors.

Sometimes conflict is inevitable, and sometimes an attorney’s bag of tools and tricks to resolve conflicts is not up to the task. Where public officials are facing uncertain legislative mandates, the resolution is both simple and profound. The entities in conflict must figure out a way to resolve their disagreements on their own. While seldom explicitly articulated, lawmakers assume and depend on the idea that public officials will resolve disputes themselves, trusting that dialogue and compromise will be effective and that the work they assign to executive branch agencies will get done.

In my little corner of the country, this trust is largely well placed, I’m happy to say. As with any body comprising individuals who hold varying opinions, the officials I work with have learned to move forward with the work the legislature has assigned them—and without an attorney’s help.

As a nonelected, nonappointed, non policymaker observing the education governing process, I have learned a valuable lesson. No matter the governance structure, individuals can resolve questions of who is responsible for certain tasks even where there is no clear legal answer. They can do so whether they are elected or appointed, and whether the board or the state chief is in the policy driver seat. Naturally, achieving this result requires honesty, humility, and sometimes even vulnerability and sacrifice.

Resolving disputes about how to make collective decisions requires careful attention to relationships and a willingness to work together. Governance structures cannot resolve all these disputes, nor can lawyers or courts.