

August 24, 2015

Dear Members of the Jeffco Board of Education,

At this Thursday's meeting (on August 27, 2015), you are scheduled to consider proposed revisions to the Bylaws for the District Strategic Planning Advisory Council (SPAC) and the District Accountability Committee (DAC). I urge you reject the proposed changes, as they fail to comply with state law, and will only worsen a muddled situation that I believe, as you saw last year, has adversely affected student achievement improvement in Jeffco.

Let me start with some background about the critical distinction between governance and management roles in any organization, and a short history of the SPAC and the DAC.

Governance is a term covering a set of functions that all boards of directors perform, on behalf of shareholders, funding providers, or voters, depending on the sector in which an organization operates. These functions include:

- Establish goals and metrics that are consistent with the organization's purpose, which, if achieved, will enable the organization to survive and thrive in the face of uncertainty;
- Hire the CEO, approve the hiring of other corporate officers (usually a legal requirement), and regularly review the CEO's performance and compensation;
- Evaluate the strategy proposed by management to achieve the goals set by the board, and either approve or reject it;
- Evaluate the proposed budget for implementing the strategy, and either accept or reject it;

- Evaluate material changes to the strategy and/or budget that are proposed by management and either approve or reject them;
- Identify and evaluate the most dangerous threats to the success of the strategy and survival of the organization, and approve processes and plans for managing or mitigating them;
- Monitor organizational performance and risk early warning indicators, and ensure that key results are reported in a complete, accurate and timely that enables outside stakeholders to make well-informed decisions.

Management functions are distinct from governance, and are performed by the employees of an organization. They include:

- Continuously assess key trends and uncertainties in the external environment that could affect the survival and success of the organization;
- Design a strategy that will achieve the organization's goals, in the face of uncertainty, with scarce resources and an acceptable degree of risk;
- Design a budget that allocates scarce resources in alignment with the approved strategy, and ensure that actual resource usage does not materially deviate from the approved budget without board approval;
- Design and implement the projects, processes, systems, and infrastructure required to implement the approved strategy;
- Create the organizational structure and hire the staff needed to implement and effectively adapt as necessary the approved strategy;

- Design and implement talent management processes that support the effective, efficient, and adaptable execution of the approved strategy and the achievement of its goals;
- Design and implement a system for identifying managing the risks related to the organization’s strategy, operations, talent, and financing;
- Design and implement a comprehensive system for monitoring and reporting on strategy implementation, risk management, and operational, talent, financial, and other important results.

This distinction between governance and management functions is important to keep in mind when discussing the critical difference between the SPAC and the DAC. I will now turn to the histories of these two entities.

In the late 1980s and early 1990s, Jeffco was faced with increasing community frustration over student achievement performance. According to Marilyn Saltzman (*F.M. Duffy Reports*, January 2006), “in April 1997 Jeffco hired a research firm to conduct a survey of Jefferson County voters. Results showed that 48 percent believed the district was on the wrong track, while only 37 percent said it was moving in the right direction.”

In May 1997, Jane Hammond was hired as Jeffco’s new Superintendent, in order, as she noted, “to bring 144 relatively autonomous schools into one high-performing school district. The goal was to increase student achievement in a community with high standards and expectations” (Jane Hammond 2009 interview on AASA.org). Saltzman further relates that “in September [1997], the Board of Education established the Strategic Planning Budgeting Council [the predecessor of today’s SPAC], made up of 35 citizens and the

district's administrative leadership...The committee's charge was to oversee the strategic planning process as well as implementation and evaluation of the plan...The Strategic Planning Committee [also] developed an annual planning and review cycle, so the district's plan was a living, breathing document that could be evaluated and updated yearly."

In 1998, the Board approved a new strategy for the district that recommitted Jeffco to improving student achievement, establishing both a new mission ("To provide a quality education that prepares all students for a successful future") and two clear goals ("All students will reach high standards through quality instruction, curriculum, and assessments, and all employees will be accountable for an efficient, high performing, customer-oriented organization focused on increased student achievement"). The strategy itself included a significant number of major changes. As Hammond noted here interview with AASA.org, "we developed a comprehensive program based on best practices research. Our plan included hiring instructional coaches in elementary and middle schools and significantly reducing class size in 3rd and 4th grades, which are the first grades tested. We also implemented increased teacher training, extended learning programs for students in need of extra help and special programs to serve our at-risk populations."

In the fall of 1999, for the first time in 16 years, Jeffco voters approved a mill levy override to fund this new strategy, which linked increased taxpayer support for the district to improved student achievement results. This funding structure won national awards, and in 2001 Hammond was named Colorado's superintendent of the year.

Looking back over the original Board of Education policies regarding the SPAC (AE-R-2) further clarifies its intended membership,

duties, and key operating policies. It notes, "members serve on the council as a result of their position in an organization represented on the council." The organizations listed include the following: (1) the Jefferson County Administrators Association; (2) the Jefferson County Education Association; (3) the Classified School Employees Association; (4) the PTA; (5) Option and Charter school representatives; (6) the League of Women Voters; (7) the Cultural Proficiency Community Advisory Group (today's Diversity Council); (8) the religious community; (9) the Chamber of Commerce; (10) City and County Government; and (11) the Jefferson County Board of Realtors.

The stated purpose of the SPAC is "to advise the district on the development and implementation of the strategic plan, including mission, community requirements, objectives, indicators, targets and evaluation"; "to increase community awareness of the strategic plan"; and to make budget recommendations to the district that are aligned with the strategic plan.

The original policy also notes that "the Strategic Planning Advisory Council is committed to operate according to consensus; however, if necessary, a majority vote may be taken. In the case of a majority vote, a minority report may also be submitted."

So, to sum up: the Strategic Planning Advisory Committee was established by the Board of Education as an entity comprised of representatives from a specified list of other organizations ("stakeholder groups") for the purpose of providing advice to the district's management team in the performance of some of its critical management functions, specifically those related to strategy formulation, implementation, budget development, and results evaluation.

The establishment of the DAC came twelve years later, when SB 09-163, "The Education Accountability Act of 2009" was passed by the state legislature and enacted into law.

The Act's legislative declaration notes that, "the General Assembly concludes that it is in the best interests of the state to adopt an aligned education accountability system for public education in this state that (a) holds the state, school districts, ... and public schools accountable on statewide performance indicators supported by consistent, objective measures; [and] (b) incorporates input from parents, educators, administrators, and the community..."

SB 09-163 established new District Accountability Committees and School Accountability Committees. The enacted law regarding the membership, duties, and powers of District Accountability Committees is found in Colorado Revised Statutes 22-11-301 and 302.

Section 301 (1) covers basic DAC membership: "Each local school board shall appoint or create a process for the election of a school district accountability committee that shall consist of:

- (a) At least three parents of students enrolled in the district public schools;
- (b) At least one teacher who is employed by the school district;
- (c) At least one school administrator who is employed by the school district;
- (d) At least one person who is involved in business in the community within the school district boundaries.

Section 301 (2) covers additional issues related to DAC membership:

(a) A person may not be appointed or elected to fill more than one of the member positions on the DAC;

(b) If a local school board chooses to increase the number of persons on the school district accountability committee, it shall ensure that the number of parents appointed or elected to the committee exceeds the number of representatives from the group with the next highest representation;

(c) A parent shall not be eligible to serve on a school district accountability committee if he or she is employed by, or is a relative of a person who is employed by the school district, including being employed at a public school of the school district.

Section 301 (3) notes that "if a local school board appoints the members of the school district accountability committee, the local school board, to the extent practicable, shall ensure that the parents who are appointed reflect the student populations that are significantly represented within the school district. Said student populations may include, but need not be limited to:

- (a) Students who are members of non-Caucasian races;
- (b) Students who are eligible for free and reduced lunch;
- (c) Students with limited English proficiency;
- (d) Students who are migrant children;
- (e) Students with disabilities;
- (f) Students who are identified as gifted.

Section 301 (4) notes that if a school board appoints members of the DAC, it should ensure that at least one of the parents appointed to the committee is the parent of a student enrolled in a charter school authorized by the local school board, and at least one of the persons

appointed to the committee has a demonstrated knowledge of charter schools.

Section 301 (5) states that the members of the DAC shall select from among the parent members a member to serve as chair or co-chair. It also states that the local board shall establish the length of term for the DAC chair or co-chair.

Section 302 (1) describes a DAC's basic powers and duties:

(a) "To recommend to its local school board priorities for spending school district moneys. Whenever the school district accountability committee recommends spending priorities, it shall make reasonable efforts to consult in a substantive manner with the school accountability committees of the school district. The local school board shall consider the school district accountability committee's recommendations in adopting the school district budget for each fiscal year;"

(b) "To advise its local school board concerning preparation of, and annually submit to the local school board recommendations regarding the contents of, a district performance, improvement, priority improvement, or turnaround plan, whichever is required based on the school district's accreditation category. In advising and preparing the recommendations, the school district accountability committee shall make reasonable efforts to consult in a substantive manner with the school accountability committees of the school district and shall compile and submit to the local school board the school performance, improvement, priority improvement, and turnaround plans submitted by the school accountability

committees;"

(c) "If the local school board receives a charter school application, to review the charter application prior to consideration by the local school board as provided in section 22-30.5-107 (1);"

(d) "To provide input and recommendations on an advisory basis to principals concerning the development and use of assessment tools used for the purpose of measuring and evaluating student academic growth as it relates to teacher evaluations;"

(e) "To consider input and recommendations from the school accountability committee of each school of the school district to facilitate the evaluation of the performance of the school's principal for the purposes of article 9 of this title;"

(f) "To provide input to the local school board concerning the creation and enforcement of its school conduct and discipline code; and"

(g) "To increase the level of parent engagement in the school district and in the public schools of the school district, especially the engagement of parents of students in the populations described in section 22-11-301 (3)."

Section 302 (2) provides for the optional expansion of these basic duties: "The local school board and the school district accountability committee shall, at least annually, cooperatively determine the areas and issues, in addition to budget issues, that the school district accountability committee shall study and concerning which the committee may make recommendations to the local school board."

So, to sum up: The DAC was established not as a committee of and by the Jeffco Board of Education, but rather by state law as an independent entity, to be, by statute, comprised of a specified number of individuals from key membership categories (parents, teachers, administrators, and members of the local business community), to be appointed by the Board of Education in specified proportion for the relatively narrow purpose of providing advice to the Board in regard to their governance functions related to the improvement of student achievement results.

Having established the critical differences between governance and management, and between the legal standing, membership, and purposes of the SPAC and the DAC, it is easy to see why the changes that have been proposed to the Jeffco Board of Education, which you will review at your August 27, 2015 meeting, should be rejected. My arguments are as follows:

1. In 2009, Jeffco illegally declared that its SPAC would perform the functions of a DAC, even though the composition of the SPAC's membership and the process through which members were appointed to the SPAC did not meet the requirements of state DAC law. Moreover, the SPAC/DAC combination was also arguably illegal because subordinate levels of government do not have the power to unilaterally combine one of their entities with an entity created by a superior level of government. For example, the state of Colorado cannot unilaterally combine the Colorado Department of Public Health and Environment with the Colorado operations of the US Environmental Protection Agency. In addition, the Board of Education never requested nor

received an opinion from counsel as to the legality of the SPAC/DAC combination.

2. District Chief of Staff Helen Neal's August 21, 2015 email to current members of the SPAC notes that the bylaws committee (membership unknown) "is recommending that the SPAC be renamed as the "District Accountability Committee", "be formally established as a board committee", and "refocused on statutory and board requirements specific to a district accountability committee." Simply renaming the committee does not address the fact that its current membership is not compliant with state law. Moreover, it is not within the power of the Jeffco Board of Education to "formally establish the DAC as a board committee", as the DAC already has an independent existence in state law. What the Jeffco Board of Education must do is implement state law.

3. The proposed bylaw revisions keep intact the illegal (for a DAC) "stakeholder group" driven membership structure, and create a complex and unintelligible process for nominating and somehow choosing (via an undefined procedure) DAC members. Again, this is clearly not in compliance with the membership requirements and processes specified in state law.

4. I also note that, per an analysis I received as a result of a CORA request, last year's meetings of the SPAC never complied with state law, in that parents, as defined by the DAC law, were never a majority of members attending the SPAC meeting, as required by the DAC law. Arguably, any and all actions taken last year by the SPAC, in the name of the DAC, were therefore also illegal.

5. Nowhere do the proposed bylaws mention the provision of the state DAC law that "A parent shall not be eligible to serve on a school district accountability committee if he or she is employed by, or

is a relative of a person who is employed by the school district, including being employed at a public school of the school district.”

6. The proposed bylaw revisions also create a class of “non-voting members” of the DAC including prior-chairs of the DAC (i.e., the DAC’s own House of Lords). Moreover, it is also proposed that, “the Chair and Chair-Elect [of the DAC] will actively seek other non-voting members who represent the diverse makeup of Jeffco Schools’ stakeholders.” Again, this contradicts state law.

7. The proposed bylaw revisions state that, “the DAC serves in an advisory role to the Board of Education and district leadership”...and “provides an opportunity for meaningful dialogue among key district stakeholder groups.” Again, this directly contradicts the state DAC law.

8. The proposed bylaw revisions also include as a role of the DAC, to “consult with stakeholders for Elementary and Secondary Education Act (ESEA) funds, regarding federally funded activities.” Again, this is not in the state DAC law, and in fact appears to add a new step to the district’s budgeting process with respect to the allocation of federal funds (which, in many cases, is already tightly constrained by federal law).

9. The proposed bylaw revisions contain an ill-defined and quite frankly dangerous provision regarding the removal of members. Specifically, the proposed language states that, “with the recommendation of the chair and chair-elect, or the district liason, a committee member may be asked to resign. Committee members with excessive absences or consistent behavior contrary to the established norms may be asked to resign.” In a later section of the proposed bylaws, these norms are listed, and include this one: “Model civility and respect for each other. This means promoting open, honest, ongoing, two-way communication in a safe and respectful manner.” The wording

of these provisions invites abuse and the silencing of dissenting views – how, for example, are civility and respect to be evaluated? And by whom? And how is one to know when one is not communicating in “a safe and respectful manner?” Would the absence of a trigger warning before raising awkward questions about Jeffco’s longstanding track record of poor achievement results for free and reduced lunch eligible and Hispanic students constitute unsafe and disrespectful discussion that could cause the chair, co-chair, or district representative to request a DAC member’s resignation? And once again, who is to make this judgment? I also note that giving a representative of district management such power again seems completely at odds with the state DAC law. Moreover, if asked to resign, is a DAC member compelled to do so? By what law? Would not a member’s forced removal from the DAC logically require a majority vote of the board that appointed him or her? Yet again, these proposed bylaw changes are wholly inconsistent with state law, and quite possibly with DAC members’ First Amendment rights.

10. Unlike the Board Policy governing the SPAC, there is no provision in these proposed bylaws for calling a majority vote on a given issue or recommendation, or for the submission of minority reports. Whether this is an oversight or an intentional attempt to further silence dissenting views I leave up to you to decide.

In sum, the proposed name change of SPAC to DAC and the proposed bylaws are wholly inconsistent with, and quite possibly illegal under state law. They should therefore be rejected.

This raises the question of what your Board should do instead to

improve the functioning of Jeffco's District Accountability Committee, assuming you reject the proposed changes.

I have a very simple solution. The Board should leave the SPAC as it is. You should announce the creation of a new DAC that will be fully compliant with state law. The Board should solicit applications for membership on the new DAC from parents, teachers, administrators, and business community members, as called for by state law. The Board should then select the members of the Jeffco DAC, again as required by state law. And the members of the new DAC should then create their own set of bylaws that comply with both common sense and state law, to enable them to focus their full attention on the critical issue of how to improve Jeffco's student achievement results. I am confident that this process can be carried out quickly and professionally, and that it will be in the short and long-term best interest of Jeffco students and their families.

Very truly yours,

Tom Coyne

Member of the SPAC

Chair, Wheat Ridge High School Accountability Committee