

**Due Diligence: A New Theoretical Model
for the School Board's Role in Creating
Strategic Educational and Financial Planning Coherence**

by
Frances S. De Nuit

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A NEW THEORETICAL MODEL
FOR THE SCHOOL BOARD'S ROLE IN CREATING STRATEGIC
EDUCATIONAL AND FINANCIAL PLANNING COHERENCE

by

Frances S. De Nuit

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This dissertation, written by

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DEDICATION

This work is dedicated to volunteers who commit their hands and hearts to helping school children have an education in the possibilities of life.

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The New Mexico Research and Study Council director, John Mondragon expressed interest in my study of school boards. He and fellow NMRSC leaders, Peter Eissele of the New Mexico School Boards' Association and Evelynne Hunemuller of the Coalition of New Mexico School Administrators were interested in the data that would be gathered from the study to aid their continuing education programs for NMRSC members. I am especially thankful to New Mexico's school board members who participated in the case studies which began March 30, 1997 and ended two months and 6000 miles later. Securing responses to surveys involves the efforts of many I may never know personally. The several phone campaigns to get the survey responses returned introduced me to most of New Mexico.

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ABSTRACT

The role of the school board in public K-12 schools is considered from the agency and the stakeholder perspectives. A new theoretical model for the school board members practice of due diligence encompassing content and process issues is developed from empirical literature on agency and stakeholder relationships, vision content and process, and strategy-making process capability.

A four pronged methodology is used to test the model and resolve research issues on the practice of due diligence: 1) Development of an accountability measure of student performance using the Accountability Report from the New Mexico State Department of Education; 2) Testing of 10 propositions and 7 hypotheses using case studies of seven districts, survey results of 89 district board presidents and superintendents, and the measure of student performance; 3) Determination of existence of due diligence through case studies of seven school boards; 4) Comparison of existing models of due diligence with the literature based model.

The sample is all New Mexico Public K-12 school districts. Case studies focused on monitoring of district educational and financial plans and the coherency between the two plans. The surveys were replications of Larwood (1993,1995) et al on vision and Hart/Banbury (1994) on strategy-making process capability.

Key findings: 1) Uniform accountability measures are available for all districts in the state but case study districts used these selectively with regard to student performance measures; 2) Board presidents and superintendents were capable of articulating a vision for the district but vision alignment was not evident; 3) The New Mexico board/superintendent contract is a behavioral versus performance contract. Diagrams of the theoretical and New Mexico models are included along with a revised model of due diligence. Recommendations for training school boards include the use of questions provoking examination of board practice leading to improved student achievement.

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CHAPTER I

THE PROBLEM

The role of the school board has come under fire in recent times with some academics even proposing that these publicly elected boards be eliminated (Danzberger, Kirst & Usdan, 1993). The growing debate in the United States regarding the role of school boards concerns the two areas of school board responsibility: Policy setting and monitoring of school system management (oversight). While the staff is responsible for management and administration, school boards are often accused of micromanagement. The activities that a board selects to fulfill their monitoring responsibility may very well look like repetitions of the work the board has hired the superintendent and staff to do. A fuller understanding of the role of the school board may take away the stigma of the micromanagement accusation's derogatory slant.

In a lecture addressing the University of Southern California Superintendent's Conference in Los Angeles (1994), Michael Kirst of Stanford University said there was very little research on school boards, with large urban school districts being the exception. This poses a problem for those who consult and train school boards. Little data is available on what school members do to monitor the educational and financial plans of a district as well as the coherency of the educational and financial plans. In other words, there have not been widescale studies on the school board's process of carrying out their duties nor the content of those activities. This lack of data

is a problem for those consultants and trainers of school boards. The nationwide problems of high superintendent turnover and lack of high student achievement remain.

School Board Duties

School boards have the duty to practice due diligence as the boards discharge their duties. Black (1991) defines due diligence as "such a measure of prudence, activity or assiduity, as is properly to be expected from and ordinarily exercised by a reasonable and prudent man under the particular circumstance; not measured by any absolute standard, but depending on the relative facts of the special case." The practice of due diligence may vary, then, as particular circumstances change.

School boards use the corporate form of governance. That is, corporations are used when individuals cannot do all the work of the organization. The corporate governance form utilizes a governing board to set policy and hire and monitor the work of management. CORPUS JURIS SECUNDUM (CJS) says, "Where the board of education is regarded as a corporate body, . . . , it has been held to have all the powers and capabilities adapted to it which such entities have at common law or by statutes (CJS, p. 243)."

In some states, school districts are public corporations. If not, they have the character of public corporations but belong to the class of quasi public corporations and as such are endowed with corporate capacity for the purpose of carrying out the state statutes related to education (Fletcher, p. 910). The common bond between corporate boards in the private sector and

corporate boards in the public sector whether the latter are public corporations or quasi public corporations lies in their duties. These include the common law duties of care, interest, obedience and the fiduciary duty as the board directs policy and administers the affairs of the district. For the purpose of this article, the execution of these duties will be called the practice of due diligence.

Historical Models of School Board Governance

The school board's management of its role has evolved with time. Prior to the 1900s school boards functioned as operating boards (Danzberger, 1994). That is, the board did not delegate operation of the schools to a superintendent as is now the custom. Trained superintendents assumed the time consuming duties of operations in the early 1900s. The school boards then became a policy setting body. While serving as a policy body, school boards left their active role in operations to education professionals. The school board during this period, by not being involved in the day to day operations, relied on the education professional's expertise. The school boards remained a policy setting body until the 1960s. The 1960s brought the school board back into the operations picture. The Civil Rights movement and accompanying legislation and entitlement programs brought the community back to the school house as various programs required community and parent participation. A weakness that developed in some districts over time was in confusion regarding the role of school board members. Accusations of micromanagement emerged when board members

monitored the work of management. Monitoring the work of management may appear to replicate the work of paid administrators.

This brief history illustrated two recognized models of school district governance: the operating board and the policy setting board. The environmental influences on school board practice may be viewed from the political, legal and school finance perspectives to reveal the need for a more explicit model of school board governance.

Influences on School Board Practice

Political

From a political perspective, local control has been drastically reduced. Consolidation of school districts began in the nineteenth century to promote higher quality education (Rebell & Hughes, 1996). In 1942 there were 108,579 school districts in the United States. By 1977 there were 28,962 (Savas, 1982) and now, as a result of this consolidation of districts, there may be less than 15,000. Sheer numbers show local loss of control via elected school board representatives. The view that schools should be funded directly, bypassing the local school district board and implying no need for a school board could mean loss of local democratic representation in setting policies and guiding operations of schools. The reason is that the direct funding idea has not been accompanied by a move to preserve local control by an elected board to govern the directly funded school. Ironically, the reduction in number of districts through consolidation has effectively reduced local democratic representation.

Legal

Kesner and Kaufmann (1994) identify common law, state law and federal law as the three sources of legal issues affecting boards of directors. The problem faced by the boards is to limit liability and yet fulfill strategic responsibilities of the corporation.

Common Law. The relationship between principle and agent is covered under common law. In school districts, the relationship exists between the state (principle) and the school board (agent). The key relationship within the district is between the school board as principle and the superintendent as agent for the board. If there are no statutory laws governing these relationships, common law prevails. Common law is based on court decisions. Common law dictates certain duties by board members. The duties include the duty of care, loyalty, obedience, and the fiduciary duty. Much of the common law has been codified by the states and federal government. Brief definitions of the duties according to common law follow:

1. The duty of care means the board member is to be active in decisions, stay informed, and act in good faith. The skills and experience a board member has are to be brought to the situation. All strategic decisions made by directors need relevant information, sufficient time to consider the information, and outside advice from experts if appropriate.
2. The duty of loyalty requires directors to put the interests of the organization above personal interests.

3. The duty of obedience requires obeying all laws and regulations. Failure to do so may create liability for guiding the organization into illegal activities and for failure in their responsibility to monitor the organization.
4. The fiduciary duty of the board involves safeguarding all interests to the greatest extent possible. (Kesner and Kaufmann, 1990, p. 220-224)

Kesner and Johnson studied lawsuits brought against corporate directors and found that “board members decisions will not be questioned where directors can demonstrate they have been well informed and involved (1990, p.33).” However, Kesner and Kaufmann suggest that prudent directors will not rely on this as an excuse to violate common law duties (p.225).

State Law. The state of flux in state law has created dramatic shifts in the duties and responsibilities of boards. The uncertainty of state laws requires prudent boards to stay abreast of legislative developments. A spate of state legislation affecting schools in the 1980s focused on reform issues. The legislation involved new teacher credentialing requirements and new high school graduation requirements. State corporate law was dramatically affected by the work of the American Bar Association’s Committee on Corporate Laws. The major function of the original Model Business Corporation Act (1950), the Revised Model Business Corporation Act (RMBCA) (1984), and the amended RMBCA (1990) “has been to codify the

common law rules regarding the duties of directors (Kesner & Kaufmann, p.227).” The duties follow:

- (a) A director shall discharge his duties as a director, including his duties as a member of a committee:
 - (1) in good faith;
 - (2) with the care as ordinarily prudent person in a like position would exercise under similar circumstances; and
 - (3) in a manner he reasonably believes to be in the best interests of the corporation.

- (b) In discharging his duties a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by
 - (1) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;
 - (2) legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person’s professional or expert competence, or
 - (3) a committee of the board of directors of which he is not a member if the director reasonably believes the committee merits confidence.

(c) A director is not acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) A director is not liable for any action taken as a director, or any failure to take any action, if he performed the duties of his office in compliance with this section. (p. 360, Eisenberg, 1995)

The term due diligence is subsumed under the duty of care in this model, but may appear in some state statutes. The term fiduciary has not been used in this model so that the duties of the director of a corporation are not confused with the duties of a fiduciary imposed by law of trusts (Eisenberg, p. 361). The corporate form with its board of directors (governing boards) has been applied to public school systems (Zald, 1969). In a corporate organization, the board “has formal and legal responsibility for controlling and maintaining organizational operation and effectiveness (Lattin, 1959, pp. 211-78, in Zald, p. 97).” Corporations were created and are created to accomplish ends beyond the capabilities of individuals. The emphasis according to Zald is on prudent action including appointing effective management and overseeing the work of management.

Federal Law. From the Occupational Safety and Health Act, the Federal Hazardous Substances Act to the Civil Rights Acts, federal laws mean federal agencies regulate actions. The governing board, as the legal head of a school district, is the target of their attention if regulations are not followed.

The problem of limiting liability and fulfilling strategic responsibilities of the corporation can be solved with five recommendations according to Kesner and Kaufmann. First, individual directors have to take responsibility to protect themselves from liability. They can do this by seeking information on the applicable standards for their role in the decision making processes of the organization. Secondly, one member of the board should be an attorney knowledgeable in business law, not for legal advice but to spot potential legal issues arising through board activities. Thirdly, the board needs to seek external expert advice and fourth, make extensive use of committees. Finally, the board members need to become more involved in board activities and corporate decisions. The final item can be accomplished by insisting on receiving adequate information, taking sufficient time to consider information, asking questions and playing role of devil's advocate, and lastly, seeking outside expert advice if appropriate (1994, pp. 241-243).

Kesner and Kaufmann noted that the role of boards up to the 1980's was as "rubber stamp" for management decisions (p. 217). The new activism that emerged is attributed to changes in the legal environment. Kesner and Kaufmann predict, "As legal accountability is increased we may see directors taking greater responsibility and more active roles in the day-to-day operations (p. 244)."

School Finance

Another perspective on school boards is the view by school finance specialists, Odden and Picus (1992). They note that local lay boards began in

the 1800s to control local schools. In the early 1900s education professionals controlled the schools. In the 1960s state and federal control emerged; then the 1980s had the state leading in education policy. The 1990s brought presidential and national governors into the picture with national educational goals. This trend of centralizing to higher levels has implications for school boards who have felt the loss of power because they do not have the power to raise revenues locally. From the school finance perspective the loss of ability of the board to raise local revenues for schools has been equated to loss of ability to govern. Property taxes provided school revenues in the early 1900s.

By the early 1990's federal funds contributed six percent and state funds provided 50 percent across the United States. In most cases now, the state government provides the majority funding for schools. Additionally, federal funds have heavy strings attached to the use of federal funds for schools. However, the idea that funding patterns determine power to enforce will is debunked by Scott and Meyer who consider centralization of funding different from centralization of substantive authority (1994, p.200).

The focus on finance has meant that more and more detail on where the money goes has become available. As state legislatures pursued various funding formulas, funding to districts was the issue as many local education agencies lost their ability to tax locally. However, this has been followed by concern of within district funding of schools. In other words, inequality may arise between schools within a district versus between districts. Part of the

argument to eliminate district school boards rests upon funding schools directly, sidestepping district discretion in funding individual schools. As states wrestle with school finance litigation, the problems focus upon ability to raise local revenue or equality of expenditures per pupil (Odden, Ed., 1992). More data is becoming available at the school level as site based management and budgeting become more popular. Those who advocate direct funding of schools for the purpose of local control have not simultaneously advocated a democratic solution to local control for the educational stakeholders.

With these environmental considerations, it is not a wonder that role confusion occurs for the school board. When there is confusion over the role of the board, the superintendent dominated model of governance can emerge.

The superintendent dominated model occurs when there is role reversal between the board and the superintendent, who is the agent of the board. It is a case of confusion over the function and purpose of the school board. Weaknesses of the superintendent dominated board include maintenance of status quo, avoidance of challenges to the system, and policy setting as a rubber stamp of the superintendent recommendations. Apparent strengths are board satisfaction, avoidance of overt or public conflict, maintenance of the status quo, and policy setting dominated by the superintendent. Notable is that maintenance of the status quo can be either a strength or weakness of the superintendent dominated model.

The domination phenomena is shared by corporate boards and the chief executive officers in the private sector as well as school boards. The history of an increasingly complex legal environment shows that corporate boards of directors of non-school organizations share many of the same difficulties in practicing due diligence as school boards. A model supporting a new theory on the practice of due diligence that reflects today's demands put upon school boards is sought in this study.

LITERATURE SOURCES PROVIDE BACKGROUND FOR NEW MODEL

Three literature sources have been tapped to provide guidance in developing a new model for the practice of due diligence. The sources are as follows:

- * Normative literature on school board roles from professional associations and research organizations
- * Theoretical literature from the business management and organization field
- * Empirical literature from the business management and organization field

Normative Literature

The normative literature regarding the role of the school board is often condensed into do and don't lists. These lists which become very long can overwhelm a reader, let alone a board member who seeks to act according to norms. The National School Boards' Association with only four elements to their Philosophy of Local Board Responsibility convey their message with

simplicity. The elements of the four part philosophy of the NSBA affect vision, strategy, accountability, and hiring and monitoring of the superintendent. These elements are also included in the works of consultants like John Carver (1990) or Edward E. Lawler, III (1996) who advocate principles to guide an organization in contrast to listing roles and responsibilities for a particular industry. Professional organizations and research groups have previously provided school boards with normative do and don't lists. The critical thinking school board of today may want and need to understand the theory behind these elements or any other principles they wish to guide their work as board members. For this study, the environment external to schools was sought to identify theories and research trends that have the potential to change the way a school board's role is viewed. The external environment selected was the business sector, specifically the academic research literature in the management and organization field.

Theoretical Literature

The theoretical research from business and industry management and organization literature addresses issues with potential relevance to boards of education. The topics include agency and stakeholder theory (Eisenhardt, 1989; Freeman, 1984) which can be related to those who involve themselves in vision setting. Ethics and its relationship to stakeholders and decision making is a subject of theory development (Gatewood & Carroll, 1991).

The issue of ethics is developed by Gatewood and Carroll by defining ethics in terms of legal versus discretionary issues of decision making. Few

studies of any scale have been conducted recently on school board decision making processes (Hange & Leary, 1996). Strategy making processes are linked to organizational performance in propositions developed by Hart (1992). Finally, the work of the Center for Effective Organizations contributes theoretical concepts regarding organizational management (Lawler, 1992).

Empirical Literature

Tests of these theories have not been directly adapted for examining school boards. However, the empirical literature reveals that testing has begun on certain aspects of concern to school boards. Replication of the Larwood and the Hart and Banbury studies have potential to move forward substantially learning about school board vision setting and a board's use of strategy-making processes. The two Larwood studies (Larwood, et al., 1993; Larwood, 1995) on vision use data suitable for multivariate analysis. The focus is on the content as well as the structure of the vision. Like this study, the respondents of the Larwood studies were leaders in their organizations. One study included deans of business schools while the second study examined chief executives of firms. The interest in vision is shared by leaders both within the K-12 public school setting and in the environment external to schools as demonstrated here by Larwood. The two studies go beyond observational and case analysis in exploratory research to demonstrate congruence with past thinking on vision. Respondents write a one sentence vision statement for their organization. Then a Likert scale is used for a self evaluation of the statement with twenty-six items. The

twenty-six items are based on a wide variety of possible vision dimensions. The dimensions are developed from the literature on vision. The focus is not on one theoretical viewpoint. The research addresses the ability of respondents to articulate a vision and identifies patterns and clusters in the vision evaluations. In the proposed replication, the vision statements of the board president and the chief agent of the board, the superintendent, will be compared for congruence.

The Hart and Banbury study identifies strategy-making processes used by the organization as reported by the chief executive officer of the organization. The researchers found that organizations using multiple modes of strategy-making processes had better performance. The seventeen item survey employing a seven point Likert scale will be used in this replication study to identify use of the command, symbolic, rational, transactive or generative strategy-making process modes. The survey is to be used with the district superintendent and the board president in the study reported here.

Eisenhardt's work on agency theory suggests the use of functional studies using a structural model. Basic data on what school boards know and are able to do is sorely needed to implement studies using such structural models. The concept of agency theory and the companion stakeholder theory (Freeman, 1984) contribute to the notion of vision development being an educational community activity more than just the domain of the board and/or superintendent. By examining the various agency relationships in which a board is involved, agency theory can help the school board members understand the boards source of power and authority. Stakeholder theory