



**Wyoming Department of Education**

Cindy Hill, Superintendent of Public Instruction  
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**FOR IMMEDIATE RELEASE - JULY 16, 2014**

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## **AN OPEN LETTER TO THE PEOPLE OF WYOMING:**

The draft report of the select investigative committee was publicly released, so I must respond publicly.

Before responding, I want to briefly comment on an injustice worked against the people of Wyoming. I have always advocated for transparency and honest, careful review of government. A year ago when the investigative committee was formed, I sent Speaker Lubnau a letter requesting a transparent and fair process. As the committee was being staffed with SF104 supporters and legislators who had publicly and repeatedly slandered me, I worried that the legitimacy of the process would be questioned. On June 27, 2013, I wrote:

Without due process protections, I fear your process will disregard the truth and the evidence, and that your process will be viewed as a sham motivated by political reasons rather than honoring the Wyoming Constitution. As such, it will not be just and will be disrespectful not only to me but to Wyoming voters.

I am attaching all of my correspondence to and from the committee as I believe it is the best evidence of how the process unfolded.

Rest assured that had there been malfeasance, the legislative leadership would have moved to impeach or file criminal charges long ago. Instead, after multiple investigations, hearings, and audits, this committee is left in the same place Cathy MacPherson was more than a year ago – holding a bag full of innuendo, opinions, and a few hurt feelings.

In the end, this process has cost the Wyoming taxpayer over a million dollars (see attached spreadsheet) and produced what is, at best, an intentional and malicious slander, and at worst, the basest attempt at political assassination. Most troubling is that the committee allowed this process to languish until the height of a political campaign. This report must be seen for what it is: a very expensive piece of political propaganda.

I have always resisted the effort on a part of a few legislators to usurp the powers vested by the people in their executive leaders. When the legislature passed an unconstitutional law, I successfully challenged it in the Wyoming Supreme Court. Recently I asked the state bar to look at the legal and ethical elements of this committee's work because it seems to me improper for the attorneys who were involved to have acted against their professional code. The state bar will examine the actions of the committee members and draw its own conclusions about the process.

Beyond that, I ask the public to critically review what happened here. We must assure ourselves and all future public officers that this type of political hack is never repeated. The people of Wyoming deserve better. I was not allowed even the most basic forms of due process. I was not provided counsel, I was not permitted to call witnesses, I was never given notice of the charges, I was not given access to evidence in the committee's possession, I was not allowed to cross examine witnesses, and committee meetings were primarily held in secret. Even the release of the draft report was done in a way to deny due process. The committee adopted an 11th hour rule change so that I would not be able to comment on the report before it was released publicly.

So I will comment now. The reader should be mindful that because the committee refused to hear from any of my witnesses, my response can only include what my witnesses would have said had they been interviewed by the committee's attorneys or permitted to testify.

After reading my response, if you have further questions or would like clarification, I invite you (the public, legislators, and anyone interested) to meet with my staff and me to discuss these issues. All questions can be answered and these issues resolved in an hour or two. I made this same invitation to the committee many times. Each time, I was ignored or rejected (see correspondence). It seems the committee was less interested in facts and more focused on other things . . . .

## **TEACHER TO TEACHER**

Had all witnesses been permitted to testify, and had the committee objectively examined the documents I provided, the report would reflect that professional development and technical assistance provided by the Wyoming Department of Education (WDE) to districts was not only appropriate, but required by both state and federal law. Further, the report would reflect that the WDE was in full compliance with 2012 Wyoming Session Laws Chapter 26, Section 5. The evidence would also show that the WDE was always transparent and open in its communication with the legislature regarding its expenditures of funds for professional development and technical assistance.

## **MANAGEMENT OF WDE FINANCIAL DIRECTIVES**

Had all witnesses been permitted to testify, and had the committee objectively examined the documents I provided, the report would have reflected that Paul Williams was paid only for time worked and that he provided invaluable service, saving the state in excess of \$3,000,000. Further the report would reflect that Shan Anderson was highly qualified and performed important and valuable work for the state. The report would also state that appropriate action was always taken with regard to any such contracts. The report would show that Victoria Leshar was a highly quali-

fied individual who provided valuable and appropriate service to the state in accordance with federal guidelines. Regarding the A-133 Audit, the report would show that during that period, WDE finances were carefully managed in accordance with all state and federal laws.

### **FREMONT #38**

Had all witnesses been permitted to testify, and had the committee objectively examined the documents I provided, the evidence would have shown the WDE collaboration with Fremont School District #38 was an appropriate response to a request for technical assistance by a struggling district. This was not only an appropriate response, but it was a response directed by Chapter 6 of the Wyoming Department of Education Rules.

### **FOLLOWING STATUTES AND EXECUTIVE BRANCH REGULATIONS AND LEGISLATIVE DIRECTIVES**

Had all witnesses been permitted to testify, and had the committee objectively examined the documents I provided, the report would have reflected that the WDE met all deadlines and completed all assigned work related to the Wyoming Accountability in Education Act. The report would also reflect that the WDE fully complied with all state statutes and regulations regarding employee classification and positions and that all personnel policies and rules were always carefully followed, as the MacPherson Report concluded. If complete, the report would show that neither political nor personal loyalty was ever expected of any employee at the WDE. If all witnesses were allowed to testify the report would reflect that the descriptions of certain meetings were either grossly mischaracterized, or simply fabricated.

### **MY TESTIMONY BEFORE THE COMMITTEE**

The report author(s) expresses opinions about my testimony before the committee. His/Her opinions are irrelevant and seem to be included in the report simply to inflame and/or prejudice. As of the writing of this response, the transcripts of my testimony are available at <http://legisweb.state.wy.us/LegislatorSummary/Audio.aspx>. I do not know why the recorded audio is not available as that would allow a listener to better understand the tone, tenor, and general feel of the hearings. At the hearing I was cross examined by Bruce Salzburg and answered every question he asked. I would invite anyone to review my testimony and draw their own conclusions.

My lack of specific response to any part of the report should not be considered or construed as an acknowledgment or agreement to the accuracy or validity of that portion of the report.

Sincerely,



Cindy Hill

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*Attached: Estimated Investigative Costs  
Compiled Investigative Committee Correspondence Through 12/16/2013*

| <b>Minimum Estimated Costs Associated with Committee Work</b>   |                       |
|---|-----------------------|
| Macpherson inquiry (direct cost paid to Cathy MacPherson)   | \$150,000.00          |
| Management Council (appropriation to pay attorneys and fund meetings)                                   | \$231,000.00          |
| Estimated value of WDE staff time and resources diverted from the students of Wyoming to this process.  | \$500,000.00          |
| Estimated value of OSPI staff time and resources diverted from the students of Wyoming to this process. | \$200,000.00          |
| Estimated ETS assistance in subpoena requests   | \$10,000.00           |
| Estimated LSO Attorneys cost  | \$250,000.00          |
| <b>Total Estimated Cost</b>   | <b>\$1,341,000.00</b> |



# Office of the Wyoming Superintendent of Public Instruction

Cindy Hill, Superintendent of Public Instruction  
2301 Central Avenue, Barrett Building, Second Floor  
Cheyenne, Wyoming 82002  
phone: 307-777-2053 | web: [ospi.wyoming.gov](http://ospi.wyoming.gov)

June 27, 2013

Speaker Tom Lubnau  
Wyoming House of Representatives  
Wyoming Capitol  
Cheyenne, WY 82002

Dear Speaker Lubnau:

Through press accounts I have kept informed about your intention to form an investigative committee to review the MacPherson report. It has been further suggested that you intend to utilize the House Rules Committee for this purpose.

The purpose of this letter is to request due process be afforded me during this investigation.

I am sure it comes as no coincidence that all of the House members sitting on the Rules Committee voted for SF 104. As such they have taken positions and formed and expressed views demonstrating they are not impartial in this process. My understanding is that the suggestion supported by House membership was that a more independent and balanced committee would be formed rather than the assignment to the Rules Committee. As it now stands, use of the Rules Committee in no way hints that this process will be impartial and objective.

I request you revisit your decision to use the House Rules and Procedures Committee by appointing a mixture of persons on both sides of SF 104 to provide at least the appearance of a fair, impartial and measured process. There are any number of approaches that you could take to make the process more balanced.

Your statements to the press demonstrate that little attention has been given to even the most basic notions of due process. I understand that I will be allowed to speak and to ask "clarifying questions" of those testifying. What does this mean? Does that mean I will be allowed to speak for a limited time at the end of meetings and then be cut off in mid-sentence? Will I, or my legal representatives, be able to attend and participate in all subcommittee meetings? Will all meetings, debates and deliberations be open and public or will they occur by email traffic? My belief is that the voters of Wyoming will be keenly interested in the process; they will expect it to be fair, and that I am afforded due process.

In that regard, as required by the constitutions of the United States and of Wyoming, I must be afforded due process, including the opportunity to call witnesses, to cross-examine adversarial witnesses, to obtain and then present evidence, to call into doubt the credibility of inherently untrustworthy evidence or witnesses, to know fully the charges being investigated and the law supporting the charges, and

finally to be represented by counsel of my choice. I have broken no state or federal law, have not misused any money, and have not violated any state policy. Moreover the MacPherson report does not identify any violations. Without due process protections, I fear your process will disregard the truth and the evidence, and that your process will be viewed as a sham motivated by political reasons rather than honoring the Wyoming Constitution. As such it will not be just and will be disrespectful not only to me but to Wyoming voters.

I ask you to consider these requests soberly and with the integrity that we all want from legislators and the legislative process.

Respectfully,

A handwritten signature in black ink that reads "Cindy Hill". The signature is written in a cursive, flowing style.

Cindy Hill  
Superintendent of Public Instruction

Cc: President Tony Ross  
Legislators  
Wyoming Press

Representative **Thomas E. Lubnau**  
Speaker of the House  
Wyoming House of Representatives **House District 31**  
4 Cherokee Circle • Gillette, WY 82718



business (307) 682-1313  
email [Tom.Lubnau@wyoleg.gov](mailto:Tom.Lubnau@wyoleg.gov)

July 8, 2013

*Via First Class U.S. Mail and  
Via Email: [cindy.hill@wyo.gov](mailto:cindy.hill@wyo.gov)*

Cindy Hill  
State Superintendent of Public Instruction  
Hathaway Building, 2<sup>nd</sup> Floor  
2300 Capitol Avenue  
Cheyenne, WY 82002-0050

Dear Mrs. Hill:

Thank you for your public letter requesting due process. Be advised the Wyoming House would consider nothing less.

Your letter contained some misunderstandings I would like to clarify. SF 104 was a bill to reorganize a department that has not been well-organized for at least 30 years. Reports dating back to the 1980's confirm the disorganization. While I have stated publicly that your conduct in office provided the Legislature with the political will to move forward with the task, the reorganization of the department was about improving functionality in the department, and not about you or your conduct. So, votes on SF 104 have little to do with whether or not you have violated the public trust, despite the spin to the contrary.


The investigative committee is solely about your conduct. I suspect any choice of committee that was made would be subject to your criticism. But, given your penchant for filing a lawsuit (or threatening one) whenever you do not like a decision or a statement, I suggested the matter be investigated by the Rules and Procedure Committee. Historical precedent from other similar matters supports the Rules and Procedure Committee as an appropriate committee to address such matters. The suggestion of the Rules and Procedure Committee was simply an attempt to avoid another lawsuit.

I have absolute confidence in the integrity and discernment of the members of the Rules and Procedure Committee and their ability, as elected representatives of the people of the State, to make hard decisions on complicated matters.

That being said, I believe Management Council would be amenable to considering any constructive suggestions you might have.

Thank you for your time and attention to this matter.

Very truly yours,



Thomas E. Lubnaa, II

TL2/lr

c: Tony Ross





# Office of the Wyoming Superintendent of Public Instruction

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2301 Central Avenue, Barrett Building, Second Floor  
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July 9, 2013

Speaker Tom Lubnau  
Wyoming House of Representatives  
Wyoming Capitol  
Cheyenne, WY 82002

Dear Mr. Lubnau:

I am in receipt of your letter dated July 8 but I am not comforted by it. Notwithstanding your claim that SF 104 was motivated by an effort to organize the Department of Education that had "not been well organized for at least 30 years," I continue to believe it was personally directed at me. A considerable portion of the debate in both chambers and certainly the public debate across the state focuses on me personally. Indeed the MacPherson investigation was motivated by statements attributed to you during the SF 104 debate that it was your "duty" to investigate the claims of WDE employees, thus forever tying the two issues together.

Had the true objective of SF 104 been to solve organizational problems within the Department of Education, it would have seemed sensible for you to consult with me or previous superintendents for our suggestions. This did not occur.

Had the true objective of SF 104 been to solve organizational problems within the Department of Education, it would have seemed sensible for you to examine the role of the legislature in creating a dysfunctional system. This did not occur.

Had the true objective of SF 104 been to solve organizational problems within the Department of Education, it would have seemed sensible for the legislature to conduct interim hearings and to gather and respect public comment on the subject. This did not occur.

Had the true objective of SF 104 been to solve organizational problems within the Department of Education, it would have seemed sensible for the legislature to review the Ferrari report's recommendation that a constitutional amendment be considered. This did not occur.

The MacPherson investigation is complete. The facts have been developed. I have been vindicated.

The flimsy substance of the report serves only to confirm that I have not committed any crime, violated any rule or regulation, or disregarded any duty imposed upon my office. Your persistence with this process serves to only confirm that the legislature believes it has limitless power to spend the wealth of

Wyoming taxpayers on this continuing sham. I am befuddled about what additional information or conclusion will be the objective of a committee to be appointed.

So you will pardon me if I reject your effort to distinguish your destruction of the Office of the Superintendent of Public Instruction from the continuing effort to destroy me personally, especially when during my tenure in the position statewide average scores in math improved 9% and in reading improved 12%. In fact, scores increased in every subject matter and grade level tested. This had not occurred in decades. Clearly educational systems are succeeding in spite of overreaching legislative mandates and mounting federal control. A dysfunctional system did not give rise to SF 104 and the people of Wyoming understand your premise is baseless and false.

I will attend the Management Council meeting on Friday where I, and the people of Wyoming, will be watching carefully the steps taken to preserve my due process rights in this progression of events that continues to be clothed in secrecy and insincerity.

Respectfully yours,



Cindy Hill  
Wyoming Superintendent of Public Instruction

Cc: President Ross  
Wyoming Press



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2301 Central Avenue, Barrett Building, Second Floor  
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September 10, 2013

Speaker Tom Lubnau  
Wyoming House of Representatives  
Wyoming Capitol  
Cheyenne, WY 82002

VIA email and interoffice mail

Dear Speaker Lubnau:

My staff and I are working diligently to respond to your recent subpoena. Although I do not have counsel, I am advised by many people that it is normal and customary for documents produced to a committee such as yours to be shared with all interested parties. I am also informed by my staff that your committee and its subcommittees may have made requests to the Wyoming Department of Education or others. It seems likely that you and your committee have or will received information that is not in my possession.

Therefore I am requesting that as information is gathered by your committee that you provide me with a copy of the information in a timely fashion. This would include all documents and things such as statements of witnesses, recordings, photographs, video, etc.

I appreciate your cooperation in providing me information.

Respectfully yours,

Cindy Hill  
Wyoming Superintendent of Public Instruction

Cc: President Ross



# Office of the Wyoming Superintendent of Public Instruction

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September 20, 2013

Director Dan Pauli  
Legislative Service Office  
Capitol Building  
Cheyenne, WY 82002

Via Hand Delivery  
with Seagate USB hard drive model SRD00F1, S/N NA4QEHT

Re: Response to subpoena of Special Investigative Committee dated September 3, 2013  
Response to subpoena of Special Investigative Committee dated September 18, 2013

Dear Director Pauli,

Attached to this letter is a hard drive containing the documents responsive to the above referenced subpoenas. Because the information requested in the second subpoena is already included within the response to the first subpoena and in the reply to the document request from Representative Greear, please understand this response and the earlier reply to Representative Greear's request to be our response to both pending subpoenas. The scope of the subpoenas was extremely broad and, therefore, we were extremely broad in our response. We endeavored to provide every document possibly responsive to either subpoena. In doing so we became aware that a great many of these documents are to be maintained in confidential form. As we understand the law, in accepting this transfer you are assuming the duties associated with the documents and are assuring us the confidential nature of these documents will be respected. In essence you are now the custodian of these documents.

We appreciate Speaker Lubnau's offer of additional time to respond to the first subpoena but as you can see, that accommodation is not necessary.

The subpoenas issued under W. S. 28-1-109. The documents to be produced are not subject to the public records act (W.S. 16-4-201 to 205) and, therefore, many of the documents being provided are of sensitive nature. We further understand that this information remains confidential in nature because the legislative service office receives this information subject to the restrictions of W.S. 28-8-108. That statute includes the admonition that any LSO member "who knowingly discloses confidential information other than as authorized by this section, discloses the contents of audit reports prohibited

by W.S. 28-8-107 or release other reports of information not authorized by the management council, the management audit committee or by statute is subject to immediate termination of employment.”

We believe there are related state and federal civil and/or criminal penalties transcending mere termination of employment if these records are not handled in a proper legal fashion.

Therefore, you should be advised that within this information you will find included a variety of forms of documentation that might be covered by one or more of the following legal impediments to disclosure:

- (1) Health Insurance Portability and Accountability Act (HIPAA) (Public Law 104-191);
- (2) Internal Revenue Code section 6103 *et seq.* and the Privacy Act of 1974, 5 USC 552a (as amended);
- (3) Family Educational Records and Privacy Act (FERPA) (20 USC 1232g);
- (4) Federal Copyright protection and restrictions (17 USC 1 *et seq.*);
- (5) Identity Theft protections (18 USC 1028) as enforced by the Federal Trade Commission and other federal agencies;
- (6) Wyoming Theft of Identity statute (W.S. 6-3-901)
- (7) Attorney – Client privileged communications;
- (8) Executive privileged communications
- (9) Executive deliberative process privilege communications;
- (10) Confidential state records including test items, test score data, and personnel records, undoubtedly containing social security numbers, financial information, or other related personal matters and documents about which the involved parties have a reasonable expectation of privacy;
- (11) General Public Records restrictions and prohibitions on disclosure of records;
- (12) General proprietary information;
- (13) Account names, passwords and pass codes to state confidential data bases, including personnel records related to payroll, deferred compensation, and the Wyoming retirement system; and
- (14) Other restrictions on disclosure or dissemination of information as prescribed by the state and federal constitutions, common law, as well as state and federal statutes, rules, regulations and procedures.

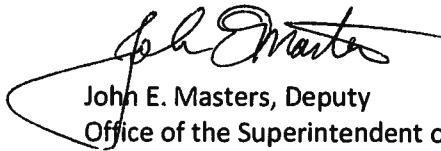
As you are now the custodian of this information, we commend to you a thorough review of each of the aforementioned statutes prior to your copying, distributing, or otherwise further disseminating these records. We are aware that at times members of the legislature do not seem to understand or appreciate the gravity of the duties imposed with possession of this type of information. We also are concerned that the inadvertent release of this information by your staff, the committee members, or other members of the legislature may cause substantial harm to any number of individuals and might likewise create compensable actions in favor of those individuals. For these reasons and others, we urge you to exercise extreme caution in your use of this information.

Obviously the Superintendent does not waive any rights she may possess to preserve the confidential nature of these documents. Nor does she exercise rights she may have to release information otherwise confidential. Rather, she expects you and anyone coming into possession of this information to be fully aware of the duties associated with the possession of this information. Therefore, if you desire to release, disseminate, communicate, or further copy and distribute any of this information, we advise you to confirm such information may be appropriately released. If you desire permission from the

Superintendent, please submit a written request clearly identifying the documents subject to the request, so that she may consider whether she wishes to authorize further release information.

Should you have questions you may address them to the Superintendent or to the undersigned.

Sincerely yours,



John E. Masters, Deputy  
Office of the Superintendent of Public Instruction

cc w/o encl: Cindy Hill, Superintendent of Public Instruction  
Mike Robinson, OSPI assigned AG representative  
Tom Lubnau, Speaker of the House  
Tony Ross, President of the Senate

I, Dan Pauli, Director of the Legislative Service Office, acknowledge receipt of this letter and the Seagate Hard drive identified above (the electronic submission) on this 20 day of September 2013.



Director, Legislative Service Office  
Dan Pauli, or his designee



**SELECT INVESTIGATIVE COMMITTEE**

September 27, 2013

Cindy Hill  
Superintendent of Public Instruction  
2301 Central Avenue, Barrett Building Second Floor  
Cheyenne, Wyo. 82002

**Via Hand Delivery**

Re: Request for Full Report of Governor's Investigative Team and Supporting Documents.

Dear Superintendent Hill,

We have received your 118 gigabit document production in response to our legislative subpoenas of September 5<sup>th</sup> and September 18<sup>th</sup>, 2013. As you will recall, the subpoenas requested the following documents:

**Subpoena Served September 5<sup>th</sup>:**

1. All of the emails, texts, and correspondence, whether contained on personal accounts utilized to discuss public business or state accounts, sent or received by [individuals specified in subpoena] which relate to, mention, or refer to the following subjects directly, indirectly, by name or otherwise:
  - a. Wyoming Department of Education employees;
  - b. 2013 Senate File 104;
  - c. The Governor's Inquiry Team and its investigation;
  - d. Proposed or enacted legislation relating to any education related topic;
  - e. Fremont County School District 38;
  - f. The use of special education or other WDE funds;
  - g. Closing the assessment division in Laramie;
  - h. [Individuals specified in subpoena] regardless of the manner in which they are referenced.
2. Teacher to Teacher ("T2T") instructional or delivery materials and advertisements, including all versions and draft versions;
3. SpLit instructional or delivery materials and advertisements, including all versions and draft versions;
4. 3+8 instructional or delivery materials and advertisements, including all versions and draft versions;
5. Lists of every expenditure from, and transfer to or from, Unit 6321 (State Personnel Development Grant (SPDG) monies) and Unit 6320 (special education program monies) from March 1, 2012 to January 29, 2013;

6. Documents describing any transfers of money between divisions, departments, programs, accounts or funding sources within the Department of Education related to the Teacher to Teacher ("T2T") instructional or delivery program, the SpLit instructional or delivery program and the 3+8 instructional or delivery program;
7. SPDE grant terms;
8. Travel documentation on aircraft use, including but not limited to agendas for the day of travel;
9. Report of [individual specified in subpoena] concerning [individual specified in subpoena];
10. All correspondence, whether contained on personal accounts utilized to discuss public business or state accounts, between members of the press and WDE or OSPI which relate to, mention, or refer to the following subjects directly, indirectly, by name or otherwise:
  - a. Wyoming Department of Education Employees;
  - b. 2013 Senate File 104;
  - c. The Governor's Inquiry Team and its investigation;
  - d. Proposed or enacted legislation relating to any education related topic;
  - e. Fremont County School District 38;
  - f. The use of special education or other WDE funds;
  - g. Closing the assessment division in Laramie;
  - h. [Individuals specified in subpoena] regardless of the manner in which they are referenced.
11. Recorded phone conversation with OSEP from [individual specified in subpoena];
12. Recording of [individual specified in subpoena] "mediation" with [individual specified in subpoena];
13. [Individual specified in subpoena] e-mails concerning schedule of [individual specified in subpoena].

**Subpoena Served September 18<sup>th</sup>, 2013:**

1. All documents and other materials in the personnel file of [individual specified in subpoena].
2. Documentation of attendance of OSPI personnel at the 2013 Wyoming Girl's State including but not limited to: itineraries, agendas and travel reimbursement vouchers.
3. All documents, notes, reports, correspondence and other materials concerning any investigation conducted by [individual specified in subpoena] into matters at the Wyoming Department of Education.
4. All documents pertaining to the reclassification of the Department of Education Human Resource Supervisor as an "at-will" position following the departure of [individual specified in subpoena].
5. All employment or contract documentation for [individual specified in subpoena], including but not limited to:
  - a. Contract for employment, including but not limited to, drafts, amendments, correspondence related to the contract and any payments made pursuant to the contract;
  - b. Personnel File;
  - c. Job Duties;
  - d. Managerial or Supervisory Responsibilities;
  - e. Any business cards or templates for business cards used by [individual specified in subpoena];
  - f. Any resumes or Curriculum Vitae for [individual specified in subpoena].
6. All complaints from Department of Education employees to any individual or entity within Wyoming State Government and all documents, notes, reports, correspondence or other material related to investigations resulting from, or related in any way to, the aforementioned complaints.



7. Any reports or investigations conducted by the Wyoming Attorney General's Office into issues within the Department of Education.
8. All Department of Education recordings in any format featuring the following employees:
  - a. [Individual specified in subpoena];
  - b. [Individual specified in subpoena];
  - c. [Individual specified in subpoena].
9. All files or notes composed or compiled, in whole or part by [individual specified in subpoena] concerning meetings attended by Department of Education employees.
10. [Individual specified in subpoena] e-mails concerning meeting at the Department of Education on November 19, 2012 and the [individual specified in subpoena] interviews on January 23, 2013.
11. All Department of Education organizational charts created during the relevant time period during relevant time period.

Your response includes 165,000 unique files split into two folders entitled "Documents" and "E-mails". Indicative of files and documents in your response are files such as a 45 minute mp3 recording of motivational speaker and illusionist Billy Riggs giving a presentation entitled "How to Drive Yourself Without Driving Yourself Crazy" which is an interesting and comical look at how to balance the priorities of life, but has nothing to do with the documents the Select Investigative Committee has requested. Also included are several interviews with former Superintendent of Public Instruction, Velma Linford, conducted during the 1970s. Again, the information is nice but, it has nothing to do with the requested documents. Included are over 3,000 picture files comprising 4.3 gigabytes of photographs, including a nice photo of some unidentified people in a gymnasium which was taken on October 27, 2011, and multiple photographs of John Singer Sargent's painting entitled "Death and Victory" from the Widener Library at Harvard College. These photos have nothing to do with the subpoenaed information. The response you have provided is at minimum, feeble, or at its worst, a transparent attempt to hide relevant documents in a myriad potpourri of irrelevant jetsam.

What may very well be the most concerning aspect of your response to the subpoenas are the numerous confidential documents you produced which are in no way responsive to the subpoena, such as individual student exception requests for the PAWS exam. Additionally, such a careless, overbroad and unresponsive production of documents is completely unnecessary. You have assistance available from the Wyoming Department of Enterprise Technology Services (ETS) to develop searches which will produce the requested documents. Other agencies of the State of Wyoming have utilized the services of ETS to prepare their responses to our subpoena requests with impressive results. I find it curious and troubling that you choice not to utilize the services of ETS when responding to the Committee's subpoenas. Additionally, I offered you an extension of time to respond to the September 4, 2013 subpoena which you declined. You further claimed to make a full response to the September 18, 2013 subpoena within 48 hours of the issuance of that subpoena. The Committee has exhibited a clear willingness to work with you and your staff so that you can provide the documents in your possession that the Committee needs to fully and fairly develop a thorough understanding of the issues we are charged with investigating. Instead, you have produced a multitude of unresponsive documents without any semblance of an organizational structure in an apparent attempt to hide a few "needles" in an enormous "haystack". The attempt to conceal relevant documents within a hard drive of 165,000 files demonstrates your apparent contempt for this Committee and legitimate legislative processes.

At this point, the Investigative Committee possesses documented allegations of a myriad of fiscal and personnel related charges lodged against you and your senior leadership. Our subpoenas seek to obtain documents which concern the following allegations leveled against you and your leadership: allegations

that you diverted federal funds so you could use the state airplane, sexually harassed employees, covered up allegations of sexual harassment and retaliated against those who complained about that harassment, diverted funds away from special education programs to teach the Common Core Standards after Wyoming Law prohibited you from running the program, allowed members of your senior leadership to mislead representatives of the federal government as to the use of those special education funds, created a hostile and intimidating work environment, violated a multitude of Wyoming employment rules, made bad faith Public Records Act responses, lead the State of Wyoming in the takeover of a local school district where you imposed a curriculum from the state and hired state staff to teach the state mandated curriculum and meddled in the awarding of a grant funds to fund the takeover. While these statements are only allegations at this stage, they are very serious and deeply concerning. Your apparent attempt to hinder the investigation by producing a series of irrelevant documents, rather than producing relevant documents in a usable format to the Committee, coupled with your press release demanding the documents be kept confidential, is also deeply concerning.

We grow weary of your transparent attempts to frustrate the work of the Select Investigative Committee. In February, you said you would welcome any investigation. In August, you pledged in a public hearing before the Select Investigative Committee to participate and cooperate fully with the Committee. The manner in which you responded to these subpoenas indicates that your actions do not follow your words.

I am providing you with another opportunity to produce the requested documents in a useable format. I ask that you carefully review each subpoena request and only produce documents responsive to the request. Then contact ETS so that they can assist you in developing searches which will produce the requested documents. Next, catalog and organize your production based on the particular subpoena and the specific numbered request within that subpoena the production is responsive to (e.g.: Subpoena of Sept. 5, 2013 Request 1a., 1b., etc.). Finally, if you are concerned that information you are producing is confidential, produce a confidentiality log with specific citation to federal or state law which protects the information contained in the documents identified as confidential. Committee members and staff will then treat identified documents accordingly. Rest assured, though, the Select Investigative Committee will not be intimidated, frustrated or distracted from fulfilling its duties. The people of Wyoming deserve nothing less.

Respectfully,



Rep. Tom Lubnau, Chairman  
Select Investigative Committee

Cc: Members, Select Investigative Committee



# Office of the Wyoming Superintendent of Public Instruction

Cindy Hill, Superintendent of Public Instruction  
2301 Central Avenue, Barrett Building, Second Floor  
Cheyenne, Wyoming 82002  
phone: 307-777-2053 | web: [ospi.wyoming.gov](http://ospi.wyoming.gov)

October 1, 2013

Speaker Tom Lubnau  
Wyoming House of Representatives  
Wyoming Capitol  
Cheyenne, WY 82002

VIA email and interoffice mail

Dear Speaker Lubnau:

I am writing in response to your September 27, 2013 letter regarding my production of documents related to two subpoenas.

I am somewhat perplexed by your letter. My small staff, without the assistance of an attorney, spent the better part of two weeks collecting and preparing the documents you requested. Now, if I understand your letter, you are complaining that we provided **too many** documents.

I received two very broadly worded subpoenas from you. I am not a lawyer, but as I reviewed your subpoenas it seemed that any number of emails and other documents might be responsive, related to, or relevant to your requests. I wanted to ensure that your committee had everything you might possibly need so that your work would be based on all the relevant facts. I did not want to speculate as to what you might find relevant and responsive and run the risk of failing to provide some important document.

As you noted in your letter, I have always maintained a position of total transparency. My response, which disclosed every email and document produced in my office during the relevant time period, was consistent with that approach. Without the benefit of a lawyer to assist me, I believed it was best to provide everything rather than run the risk of not complying with the subpoena. Cathy MacPherson and her team also had access to all of this information and I thought it was only fair that your committee have the same level of access.

You now have all the documents you need from my office. I will leave it to you, the LSO staff and attorneys, and the other legal advisors and/or consultants you decide to hire to determine what is useful to you. I must, however, reiterate the concerns expressed by my deputy, John Masters, regarding the very sensitive, confidential, and/or privileged nature of much of the information provided. (see attached letter from John Masters)

On a related note, on September 10, 2013, I sent you a letter requesting that you provide me with copies of whatever documents your committee possesses or has received related to this investigation (see my attached letter). As of today, you have neither acknowledged receipt of my letter nor provided any documents. Nevertheless, in your most recent letter you stated you possess “documented allegations of a myriad of fiscal and personnel charges lodged against you and your senior leadership.” I would be very curious to see the documentation to which you are referring. It will be difficult for me to be helpful in your investigation if you continue to fail or refuse to provide me with any evidence supporting the allegations. Please advise whether such documents exist and when I can expect to receive copies of those essential documents.

Finally, as I review your latest subpoenas it becomes apparent that you and your committee are interested in topics well beyond what was examined in the MacPherson investigation. Your failure to respond to my letter and most recent communication suggest that after many investigations you still have not uncovered anything to support the unsubstantiated rumors and suggestions of misconduct upon which you have been relying. I am anxious for this to come to a conclusion so that I can once again focus all my time and efforts on helping the children of Wyoming.

Respectfully yours,

A handwritten signature in cursive script that reads "Cindy Hill". The signature is written in black ink and is positioned above the typed name and title.

Cindy Hill  
Wyoming Superintendent of Public Instruction



## SELECT INVESTIGATIVE COMMITTEE

October 8, 2013

### Re: Retention of Special Counsel for Select Investigative Committee

Dear President Ross and Management Council Members,

As most of you are aware, over the past two months, the Select Investigative Committee, through its four subcommittees, has conducted an investigation into allegations of improprieties involving the Wyoming Department of Education and the Office of Superintendent of Public Instruction. The subcommittees have requested documents from the Office of Superintendent of Public Instruction, the Wyoming Department of Education (WDE) and the Wyoming Department of Administration and Information pertaining to the issues this Committee is charged with investigating. To date, the subcommittees have received hundreds of thousands (if not over one million) pages of documents (some relevant and some irrelevant) pursuant to our document requests. LSO staff for the Select Investigative Committee is attempting to organize these documents and other information into a format the Committee can use. As an example, the Superintendent of Public Instruction provided a document dump of 118 gb of information, consisting of 160,000 discrete files consisting of what I am told could be 800,000 to one million pages of information. On the other hand, the Wyoming Department of Education has provided organized, searchable and useable responses to our requests. The contrast is stark.

The Superintendent claims she is cooperating fully by burying the Committee with reams of irrelevant documents, and only she knows her true motives. Staffing of the Committee has become an issue. We anticipate her supporters will issue a hue and cry about requests for additional dollars to accomplish our task, as well as retention of counsel by the Committee. The criticism will be leveled no matter what the Committee does. The subcommittees are making progress, and we believe that further proceedings are necessary to finalize the answers raised by the WDE employee allegations.

The Committee attempted to address this task without staffing other than LSO, and we have made some progress on the issues, but the complexities of the issues, the need to interview further witnesses, and the legal hurdles the committee finds itself having to address make it difficult or nearly impossible for a citizen legislature to address alone. Let me share a few examples. Included within the hundreds of thousands of pages of documents produced by the Superintendent is confidential information concerning an untold numbers of school students.

Some of the confidential student information is medical in nature. Most, if not all of the confidential student information is nonresponsive to the subpoena requests – in other words, the Committee did not ask for any of this information in any way, shape or form. Production of that information may be protected by the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act (HIPAA). To avoid any wrongful disclosure of that information by the Committee, the Committee has not reviewed the information contained on the hard drive produced by the Superintendent. By keeping the student information confidential, the Committee has restricted itself from reviewing the Superintendent's documents. Of course, the Superintendent's response to the subpoena came with a demand that the Committee keep confidential documents confidential. The Committee has asked the Superintendent to take another stab at production of documents, and according to news media reports, she will not do so. The Committee finds itself in a complicated legal situation, created not of its own making, and needs experienced legal advice on how to proceed.

Allow me to share another example. One of the employees investigated has threatened to sue other individual employees for sharing information with the Committee and not following the customary procedures for administrative relief under the State's rules, which his counsel claims has denied this employee due process and other protections potentially available to him. Additionally, the employee has made claims for defamatory communications which tend to hold this employee to "hatred, contempt, ridicule or scorn" or that "tends to injure his reputation as to diminish the esteem, respect, goodwill or confidence in which" the employee is held.

Next, the Superintendent, through one of her three attorneys, has made demand on members of the committee for publishing a white paper detailing why certain votes were made on Senate File 104. That letter, coupled with her demands that information be held confidential or subject the Committee to criminal or civil prosecution has created a difficult legal scenario through which the Committee is now obligated to navigate. The Committee would benefit from the guidance of Special Counsel on the proper handling of confidential information and the manner in which it may be disclosed.

Additionally, the assistance LSO staff can provide the Committee in actively conducting this investigation is limited. Under our Committee rules, LSO staff cannot interview witnesses or provide us with an opinion on the veracity of witness testimony or whether a particular issue should continue to be investigated based on the evidence currently available to the Committee. Although warranted, these limitations have hindered the ability of the Committee to conduct a thorough investigation.

The Committee appears to have reached a point at which it can no longer effectively or efficiently conduct the investigation into these critical issues assigned to it without additional assistance. Management Council realized the Committee may require the assistance of outside counsel and other experts and authorized the Committee to contract with such entities in its motion creating the Select Committee of July 12, 2013. Given its authority, the Committee voted to retain outside attorneys to act as Special Counsel for the Committee. The Special Counsel, among other duties, will review relevant evidence on key issues as determined by the

subcommittees, help the subcommittees narrow the focus of their investigations and potentially conduct informal and formal interviews of witnesses and help draft the Committee's final report. And make no mistake; the Committee is still in the investigative phase of its process. It is collecting evidence and interpreting that evidence. Any sharing of the evidence collected at this point with an individual or entity outside of the control of the Committee would not only severely impact the ability of the Committee to complete its charge, it may be improper given the confidential nature of much of the information produced to the Committee.

While conducting a search for Special Counsel, Committee leadership contacted multiple attorneys and law firms throughout Wyoming and a neighboring state. While most of these attorneys expressed interest in acting as Special Counsel, some declined because of the time commitment required, potential conflicts of interest or other issues. The Committee received written expressions of interest from two groups of attorneys to act as Special Counsel. First, Bruce Salzburg, formerly Wyoming Attorney General and now with the law firm of Crowell and Moring, LLP, has offered to act as Lead Special Counsel assisted by Rob Jarosh and other attorneys from the Cheyenne firm of Hirst Applegate, LLP. Additionally, a Denver, Colorado litigation firm has also expressed interest in acting as Special Counsel with a team of attorneys. Following is a breakdown of the proposed legal fees of Crowell Moring and Hirst Applegate, the Denver Firm and also the costs for the law firm of Atkin Gump who was retained this summer to act as the Special Counsel for the Utah House Special Investigative Committee into allegations of wrongdoing against Utah Attorney General John Swallow:

|  | <b><u>Crowell Moring-<br/>Hirst Applegate</u></b> | <b><u>Denver<br/>Litigation Firm</u></b> | <b><u>Atkin Gump<br/>(Utah Special Counsel)</u></b> |
|--|---|--|---|
| Lead Counsel<br>(per hour)                         | \$350   | \$490                                    | \$740   |
| Principal<br>Attorney<br>(per hour)                | \$295   | \$325                                    | \$664   |
| Other Attorneys<br>(per hour)                      | \$265   | \$225-300                                | \$292 - \$624                                       |
| Paralegals<br>(per hour)                           | \$145   | \$125                                    | \$116 - \$260                                       |
| Other Support<br>Staff<br>(per hour)               | N/A   | \$75 (excludes<br>Secretaries)           | N/A   |
| Other Expenses<br>(copies, travel,<br>meals, etc.) | Yes   | Yes                                      | Yes   |

After reviewing both expressions of interest, and considering all other factors (including the fact that a vast majority of the witnesses and meetings will be in Cheyenne) the Select Investigative Committee voted by e-mail ballot to retain the services of Bruce Salzburg of Crowell Moring and Rob Jarosh of Hirst Applegate to act as Special Counsel for the Select Investigative Committee. Special Counsel will be retained pursuant to a Letter of Engagement sent from Mr. Salzburg which incorporates a "Scope of Services for Special Counsel" Memorandum prepared by LSO staff. The Committee will also determine whether an investigator should be retained to assist the Special Counsel.

The Committee is requesting that Management Council authorize an initial budget of one hundred thousand dollars (\$100,000.00) for the services and expenses of Special Counsel and other staff or consultants the Committee determines necessary. This is only an initial budget request. It may be necessary to request additional funds as this investigation progresses.

Due to the urgency of concluding this investigation as soon as possible, I am requesting Management Council meet by conference call for **Tuesday, October 15<sup>th</sup>, 2013 at 2:00 p.m.** to consider the Committee's budget request. LSO will also broadcast the meeting in Room 302 in the State Capitol for members who wish to attend in Cheyenne, representatives of the WDE and the Office of the Superintendent of Public Instruction and the public.

**If you cannot attend the meeting, please submit your vote by e-mail to Dan Pauli at [dan.pauli@wyoleg.gov](mailto:dan.pauli@wyoleg.gov) or Matt Obrecht [matt.obrecht@wyoleg.gov](mailto:matt.obrecht@wyoleg.gov) prior to the meeting on whether to authorize the initial budget request of \$100,000.00 to the Select Investigative Committee to retain Special Counsel and other outside contractors as determined necessary by the Select Investigative Committee.**

Thank you and I look forward to hearing your thoughts on this issue next Tuesday.

Respectfully,



Rep. Tom Lubnau, Chairman  
Select Investigative Committee

Cc – Select Investigative Committee Members  
Bruce Salzburg, Crowell Moring, LLP  
Rob Jarosh, Hirst Applegate LLP

Enc. – Engagement Letter Crowell Moring LLP/Hirst Applegate LLP  
LSO Scope of Service for Special Counsel Memorandum  
Management Council Motion to Appoint Select Investigative Committee





# Office of the Wyoming Superintendent of Public Instruction

Cindy Hill, Superintendent of Public Instruction  
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October 14, 2013

Representative Michael D. Greear  
Select Investigative Committee  
Chair-Subcommittee on Issues Surrounding WDE Involvement with Fremont #38 School District

via email

Dear Representative Greear,

Unfortunately, I am not able to attend your October 15, 2013 meeting. As you may know, October 15 is the date I am required to submit my report on the general status of all public schools for the legislature and I will be heavily involved with that process all day.

I would have sent someone else, but I do not have any assistance in these matters. I want to be engaged and helpful in this process and hope my absence does not negatively impact your ability to complete your work. Although I understand you will not be taking public testimony, I can be reached by phone if necessary.

The meeting notice I found online indicates that you will be reviewing and considering the WDE's work with Fremont County School District #38. Let me give a brief overview that I hope will be helpful to you as you consider this work.

In the summer of 2011, a representative from Fremont School District #38 called me asking for help from the WDE. The caller explained that many of their students were struggling in reading. For example, only 18% of their third grade students were proficient in reading. They asked if there was anything the WDE could do to help them improve. We immediately began working with that district.

Working with district employees, we offered an intervention called WYR (Wyoming Read). This is a protocol involving one-on-one tutoring aimed at improving reading comprehension for students struggling to read. The impact was immediate and dramatic. Following the intervention, student scores on the statewide assessment improved from 18% to 58% proficient and above in reading.

Fremont #38 quickly saw the value of this work. I understand that the project was initially funded by the district. Later, the district applied for and was awarded a School Improvement Grant (SIG) to continue working on reading. I believe David Holbrook and Beth Van de Wege oversaw the review and approval of this grant. If there are any concerns about their work on the SIG grant, please let me know.

Let me take the opportunity to say that I am very proud of the hard work and tireless effort of everyone involved with this project. Fremont #38 would not have been the success that it was without the commitment and diligence of both the staff at the WDE and our friends and colleagues at Fremont #38. I hope this committee will take the opportunity to highlight the truly remarkable improvements that resulted in Fremont #38.

I have provided all of the documents in my possession that might be relevant or helpful to you as you review and understand the work that was done with Fremont #38. If I can be of further assistance, please do not hesitate to contact me or the members of my staff.

Sincerely yours

A handwritten signature in black ink that reads "Cindy Hill". The signature is written in a cursive, flowing style.

Cindy Hill  
Superintendent of Public Instruction



# Office of the Wyoming Superintendent of Public Instruction

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October 22, 2013

Speaker Tom Lubnau  
Wyoming House of Representatives  
Wyoming Capitol  
Cheyenne, WY 82002

VIA email and interoffice mail

Dear Speaker Lubnau:

I am writing for a couple of reasons. First, I am following up with my letter of October 1, 2013. In that letter, I wrote the following:

On September 10, 2013, I sent you a letter requesting that you provide me with copies of whatever documents your committee possesses or has received related to this investigation (see my attached letter). As of today, you have neither acknowledged receipt of my letter nor provided any documents. Nevertheless, in your most recent letter you stated you possess “documented allegations of a myriad of fiscal and personnel charges lodged against you and your senior leadership.” I would be very curious to see the documentation to which you are referring. It will be difficult for me to be helpful in your investigation if you continue to fail or refuse to provide me with any evidence supporting the allegations. Please advise whether such documents exist and when I can expect to receive copies of those essential documents.

It has now been over a month since my request and you have not provided a single document supporting your statement. Please acknowledge receipt and advise when you will make the referenced documents publicly available.

The other matter I wanted to address involves the use of and reliance upon the MacPherson Report. Parts of the Report have been characterized by some as “testimony.” Leah Todd at the *Casper Star* recently wrote about the work of one of your subcommittees:

Wyoming Read is at the heart of the subcommittee’s investigation because of allegations that lingered after a state investigation published testimony from dozens of Department of Education employees who worked under Hill.

...

Lawmakers also considered published testimony from employees who said...

It should be very clear that with the exception of an occasional quote, the MacPherson Report contains no verbatim statements, let alone testimony. The Report is simply Cathy MacPherson's recollections and summary of her interviews. There was no transcript or recording made of any of the interviews and, to my knowledge, no one was under oath when they spoke with Ms. MacPherson.

Whether or not Ms. MacPherson worked hard to accurately remember what was said, when my staff reviewed her summary of *our* interviews, we found many areas that were inaccurate and incomplete. Fortunately, we had the opportunity to work with Ms. MacPherson to suggest clarifications and corrections. That same process was not offered to WDE employees.

I am sure that you are as eager as I am to have accurate and reliable information. To that end, I recommend that each person who spoke with Ms. MacPherson be given the opportunity under oath to affirm, modify, or retract the unsworn statements being attributed to them. Only then can your committees proceed with the level of clarity and integrity that this process demands. Otherwise, you risk making recommendations based solely on Ms. MacPherson's summarized recollections.

I worry that the damage has already been done and that the objectivity of the committee has been irreparably tainted. I understand that over the past weeks you and your committees have been reviewing and possibly relying upon this highly suspect, second-hand information to formulate opinions and conclusions. Although I am not a lawyer, I question how this "testimony" can be relied upon in any way, or is of any value to the process.

As you know, your committee's work is very important to me. Please let me know how I can assist.

Respectfully yours,

A handwritten signature in blue ink that reads "Cindy Hill". The signature is written in a cursive, flowing style.

Cindy Hill  
Wyoming Superintendent of Public Instruction



# Office of the Wyoming Superintendent of Public Instruction

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November 19, 2013

Speaker Tom Lubnau  
Wyoming House of Representatives  
Wyoming Capitol  
Cheyenne, WY 82002

VIA email and interoffice mail

Dear Speaker Lubnau:

I am writing to express my concerns regarding the continued secretive nature of the work that is being conducted by your committees. Although your rules specifically contemplated an open and transparent process, it appears the work of your committees has been primarily conducted in secret.

The full committee has held two meetings thus far, both held largely behind closed doors (see yesterday's three-hour executive session). Only one of the four sub-committees held a public meeting before yesterday, and yet all four reported on the work they had been doing. Where and when did this work occur? How many secret sub-committee meetings have occurred? Is all of this substantive work being conducted out of the public eye in what you term "work sessions?"

Not only are your committees meeting in secret, but you continue to refuse to provide me with any of the documents in your possession related to the committees' work. As you know, on four occasions I have requested in writing that you provide me with any of the documents you claim to have which support the allegations. As of the writing of this email, you have not provided a single document. Not only does your refusal negatively impact my ability to participate in this process, but the public deserves to know what your committees are reviewing.

It appears now that you plan to further hide the work of the committee from public scrutiny as you have instructed your attorneys, paid with public funds, to secretly meet with individual witnesses to discuss their testimony. I recognize your desire to control and orchestrate the narrative as it is presented publicly; however, this is not what is expected of public servants. The people want and deserve the truth. If you want individuals to testify, I would recommend you follow the rules you adopted and subpoena them, put them under oath, and require them to testify. If the witness wants to engage counsel to assist them, your rules allow this. However, these pre-hearing meetings, where your attorneys will be allowed to prepare and coach witnesses, will be viewed, at best, as manipulative of the process, and at worst, as witness tampering. Either way, it flies in the face of transparency, will further

erode the public trust, and I believe will irreparably taint this process. Moreover, I see nothing in your rules that allows you to authorize attorneys to engage in such conduct – publicly or secretly.

If you decide that these pre-hearing witnesses prep meetings are necessary, I insist that I be permitted to be present. This will allow me to formulate helpful follow-up questions to be presented at the public hearing as permitted by your rules and will give me the opportunity to be thoughtful in my comments, if I am ever given an opportunity to speak.

You were quoted in the paper today saying, “We’ve narrowed the issues down to just a handful of issues.” I am also writing to request that you identify what issues are still being considered by the committees and provide all documents related to those issues. This will help me as I work with your committees to walk them through the information that will assist them in resolving the issues. Please respond to this letter and give me notice of what issues remain.

Finally, because you have refused to provide me any documents up to this point, please consider this a formal request for documents under the Wyoming Public Records Act. I am requesting that you make available for inspection all documents in the committees’ possession related to any of the “narrowed” issues they will be considering.

Respectfully yours,

A handwritten signature in blue ink that reads "Cindy Hill". The signature is written in a cursive, flowing style.

Cindy Hill  
Wyoming Superintendent of Public Instruction



# Office of the Wyoming Superintendent of Public Instruction

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November 21, 2013

Speaker Tom Lubnau  
Wyoming House of Representatives  
Wyoming Capitol  
Cheyenne, WY 82002

VIA email and interoffice mail

Dear Speaker Lubnau:

I am writing to let you know that my staff and I would be pleased to meet with the committee and any sub-committees in an effort to answer any questions you may have. I understand that counsel for the committee will be meeting with individuals in the coming weeks (and I hope and expect that those interviews are **not** done in a way to influence what individuals will say, but rather, will be done with integrity). However, we have heard nothing from your committee about whether you wish to speak with my staff or me. I am confident that we can easily clear up any questions any of the sub-committees may have. Please advise me whether any of the sub-committees or attorneys for the committees would like to meet with us.

Further, please advise me of the safeguards that counsel for the committee will be putting into place to ensure that the interview of individuals is done with integrity, and not in a manner to influence or manipulate statements. One safeguard for this would be to video and/or audio tape the interviews and make those recordings available to the public and me.

I look forward to your prompt response.

Respectfully yours,

A handwritten signature in blue ink that reads "Cindy Hill". The signature is written in a cursive, flowing style.

Cindy Hill  
Wyoming Superintendent of Public Instruction



Bruce A. Salzburg  
(307) 996-1417  
BSalzburg@crowell.com

November 21, 2013

Hon. Cindy Hill  
Superintendent of Public Instruction  
2301 Central Ave., Barrett Bldg., 2<sup>nd</sup> Floor  
Cheyenne, WY 82002

Re: Public Records Request

Dear Superintendent Hill:

This will respond to your letter to Speaker Lubnau of November 19, 2013, which incorporates a "formal request for documents under the Wyoming Public Records Act." In particular, you request "all documents in the committee's possession related to any of the "narrowed" issues they will be considering." Speaker Lubnau has requested that I respond on behalf of the Select Investigative Committee.

First, Wyo. Stat. § 28-8-113(a) specifically exempts "investigations of state agencies performed by or on behalf of the legislature or legislative committees" from the provisions of the Wyoming Public Records Act, Wyo. Stat. §§ 16-4-201 through 205.

Second, Wyo. Stat. § 16-4-201(a)(v) defines a "public record" as "any information in a physical form created, accepted, or obtained by the state or any agency, institution or political subdivision of the state in furtherance of its official function and transaction of public business which is not privileged or confidential by law." Wyo. Stat. § 28-8-116 provides, in pertinent part:

(a) Unless the privilege is waived by the individual legislator involved, the following shall be deemed confidential and privileged:

(i) Communications between a legislator and legislative staff relating to:

\* \* \*

(C) Any matter under consideration by a legislative committee other than communications made publicly to legislative staff in a public meeting of the committee[.]

To the extent that your request would include any such communications, or other documents received, prepared or assembled in regard to such communications, the same do not



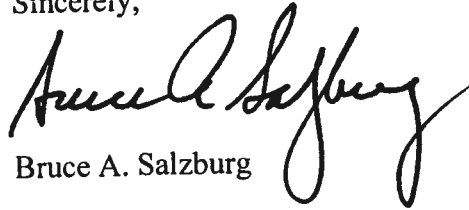
November 21, 2013  
Page 2

fall within the definition of a public record because they are made confidential and privileged by law.

In sum, the documents which you have requested are exempt from the requirements of the Wyoming Public Records Act, and, depending upon the scope of your request, may include materials which are specifically made confidential and privileged by law.

For these reasons, your request is denied.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce A. Salzburg". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Bruce A. Salzburg

cc: Speaker Tom Lubnau  
Rep. Mike Greear  
Rep. Mary Throne  
Rep. Tim Stubson  
Rep. Kermit Brown



# Office of the Wyoming Superintendent of Public Instruction

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December 30, 2013

Bruce Salzburg, Esq.  
Crowell and Moring  
205 Storey Blvd, Suite 120  
Cheyenne, WY 82009

Via US Mail and email

Dear Mr. Salzburg,

We are in receipt of the Special Investigative Committee Hearing Agenda and Notice of Hearing Procedures. We are also in receipt of the rules adopted by the committee. While the rules do not specifically so state, we have always assumed your role, and the role of the committee, would be to develop a truthful and complete account of the issues raised. Indeed this would be consistent with the Rules of Professional Conduct (*e.g.*, Rule 3.3 and 3.4) which are designed to bring all relevant evidence forth for a tribunal in a fair manner rather than an unfair or incomplete body of evidence from a biased and select group.

Therefore it was surprising to me that you chose to ignore much of the pertinent testimony that could be offered by the staff of this office, including me, and many other possible witnesses. To the contrary, the witness list seems strangely incomplete yet spiced with possible witnesses who know little to nothing about the matters for which they are being called (*e.g.*, Jonathan Braack versus any number of people from Fremont 38 including board members and staff; or Dianne Bailey instead of Fred Hansen, or Tiffany Dobler rather than Christine Steele, or Karen Kelley as opposed to John Shumway and Dean Fausset and Megan Meisen Harper).

The Hearing Procedures clearly state that this is not an adversarial proceeding so you cannot reasonably rely upon others to demonstrate shortcomings of the evidence or testimony presented. The parties and the committee are relying on you and Mr. Jarosh to preserve the fairness and impartiality of the tribunal, and I am sure your personal integrity and character demand the same. Therefore, we, the staff of OSPI, are offering ourselves as witnesses and are available for interview at a mutually convenient time.

Sincerely yours,

John Masters  
Deputy Superintendent of Public Instruction



## SELECT INVESTIGATIVE COMMITTEE

# Memorandum

**DATE** January 13, 2014

**TO** Superintendent Cindy Hill

**FROM** Select Investigative Committee

**SUBJECT** Response to Superintendent Hill E-mail of January 9, 2014.

The Select Investigative Committee has received your electronic mail of January 9, 2014, addressed to Special Counsel.

Preliminarily, Special Counsel has been retained by the Select Investigative Committee ("Committee") to assist it in its work. As you know, the primary function of the Committee is the investigation of allegations of misconduct by you and your leadership team during your tenure as the head of the Wyoming Department of Education, including those issues identified by the Governor's Inquiry Team Report of June 13, 2013.

Special Counsel is not independent; rather, they are tasked with representation of the Committee, their client. Special Counsel assisted the Committee with its presentation of the witnesses and issues that the Committee deemed appropriate for the hearings and its investigation.

For over eight months, you have had the report of the Governor's Inquiry Team, which contains 18 chapters describing allegations of mismanagement of the Department of Education, misappropriation of funds and other alleged improprieties which occurred during your administration. A separate confidential report was issued detailing complaints by some 18 employees about various personnel matters. Additionally, during 2012, individual members of the Legislature received reports regarding budgetary and personnel improprieties from employees of the Department. The Committee is primarily charged with determining whether any of the allegations that are detailed in the Governor's Inquiry Team Report are true and, if so, whether they constitute grounds to support articles of impeachment under Article 3, § 18 of the Wyoming Constitution. Further, the Committee is charged with determining whether any other legislative action might be appropriate to address any of the issues under investigation.

As confirmed in your letter to the Committee chair of October 22, 2013, after the Governor's Inquiry Team conducted its interviews, you and the members of your staff were given the opportunity to review Ms. MacPherson's interview summaries, and to correct any inaccuracies that were in the original report. That opportunity was not offered to the Department of Education employees who provided

information to the Inquiry Team. For that reason, the Committee determined that additional interviews of your staff were not necessary. The time and expense of doing so was simply not justified.

The Committee has the summaries of the interviews of your staff, as corrected. We assume that they are accurate and complete.

The Committee also has your list of 38 additional witnesses whom you request be interviewed or called to testify. Some of these individuals have been interviewed, but the Committee determined that they had no material evidence to provide. The Committee will consider and determine whether others are necessary for the completion of its work.

Your allegations of “witness tampering” by the Special Counsel in the interviewing and questioning of witnesses, or perjury by the witnesses called by the Committee, appear to have no basis. Continuously repeating them does not make them true.

The Committee did have in its possession the email exchange that is now in the record as Hill Exhibit 5. It was on the external hard drive containing 118 gigabytes of data that you produced in response to the Committee’s document subpoena of September 3, 2013. However, that communication in no way explains your instruction to departmental employees to remove references to programs in the 900 series Report to the Joint Appropriations Committee. We expect that the Committee’s report will address Hill Exhibit 5 in significant detail.

Cc:  
Members, Select Investigative Committee



# Office of the Wyoming Superintendent of Public Instruction

Cindy Hill, Superintendent of Public Instruction  
2301 Central Avenue, Barrett Building, Second Floor  
Cheyenne, Wyoming 82002  
phone: 307-777-2053 | web: [ospi.wyoming.gov](http://ospi.wyoming.gov)

January 17, 2014

Selective Investigative Committee  
Wyoming House of Representatives  
Wyoming Capitol  
Cheyenne, WY 82002

Via US Mail and email

Members of the Select Investigative Committee:

I received your January 13, 2014 Memorandum and am writing in response. I hope you will take a moment to consider my thoughts.

The author of the Memorandum wrote that the Committee's primary charge was to determine "whether any of the allegations that are detailed in the Governor's Inquiry Team Report are **true** and, if so, whether they constitute grounds to support articles of impeachment..." Any person will tell you that a quest for **truth** requires careful consideration of all relevant evidence. Any approach that ignores relevant evidence or tightly controls the message so that only one side of a story is told cannot be said to be designed to discover **truth**.

I maintain that this Committee has not been presented the **truth**. The attorneys you hired to assist your Committee in discovering **truth** never met with me or my staff. Instead, they spent months meeting with and preparing people they knew would tell a very one-sided story. The attorneys you hired to assist you in discovering **truth** failed to bring to your attention documents which would tell both sides of the story.

Let me give you some examples of how I believe this process is not intended to discover **truth**.

The Memorandum suggests I have been aware of and had the opportunity to respond to the allegations before this committee for over eight months, as they were detailed in the MacPherson report. If you review the MacPherson report, you will see that the concerns described by Trent Carroll, Greg Hanson, and Dianne Bailey are found nowhere in the Report. Were these concerns not raised to MacPherson or her team? Were they reviewed and determine to be false, baseless, or immaterial? Either way, I never had the opportunity to consider and respond until they were presented to this Committee.

The failure to bring allegations to my attention made it difficult for me to effectively participate in your hearings. What is worse, it may have resulted in the Committee having incomplete or inaccurate information.

Another related example: I heard Mr. Carroll and Mr. Hansen testify, under oath, that they were asked to make corrections to a report, and yet they did not know why they were being asked to do this. Once I learned of this allegation, I called the Committee's attention to an email, written and sent contemporaneously to these events, clearly describing the nature and intent of the corrections. Mr. Carroll and Mr. Hansen were copied on this email, as was the LSO. This email has been in your possession since it came into existence.

I do not know why Mr. Carroll's and Mr. Hansen's testimony was inconsistent with this piece of evidence, and I do not know why they failed to discuss this vital piece of evidence when they testified. Did someone decide that it was not relevant? If so, who decided to filter this evidence? Were Mr. Carroll and Mr. Hansen instructed to not provide or otherwise discuss this evidence? Did they jointly make that decision? Did they independently make that decision? Most troubling, was there an effort by some to intentionally mislead the Committee?

Without answers to those questions, I believe any reasonable person viewing these facts would be concerned that someone is trying to **hide the truth**. Moreover, many people would say these facts give rise to concerns about possible witness tampering and perjury.

This is just one of what I believe may be other instances where important evidence has been withheld from the Committee. I have other examples which my proposed witnesses can discuss at this time, or which will come out publicly before the Senate, if necessary.

In my last email, I requested copies of the notes (electronic or otherwise) that witnesses referred to and relied on as they testified before the Committee. If I remember correctly, Mr. Carroll testified that your attorneys had provided him a list of questions in advance of the hearing that he would be asked (I don't have access to the transcript or audio from the hearing, so my recollection may be incorrect). Regardless, Mr. Carroll relied heavily on the prepared notes as he testified to the committee. His notes, and those of other witnesses, might answer some the questions I asked above about potential perjury and witness tampering. Further investigation of my concerns may be warranted.

I again request to be provided copies of the notes (in any format) of all who testified, as well as copies of affidavits correcting the errors in the MacPherson Report. I understand that Dianne Bailey is providing an affidavit correcting a false statement she made regarding the funds used for the rent of the Laramie office. I would like a copy of these documents as well. Please provide those to me by the end of this week.

Finally, the author of the Memorandum indicates that some of my requested witnesses have been interviewed and the Committee has determined that they had no material evidence to provide. When was this determination made? I don't recall committee action to this effect. Was this action taken prior to the hearings in an executive session or work session? Please advise me which of my witnesses the

Committee has interviewed and determined to have no material evidence. Also, please advise me as soon as possible which of my witnesses you will be interviewing and asking to testify.

Thank you,

A handwritten signature in blue ink that reads "Cindy Hill". The signature is written in a cursive, flowing style.

Cindy Hill  
Superintendent of Public Instruction



## SELECT INVESTIGATIVE COMMITTEE

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# Memorandum

**DATE** January 13, 2014

**TO** Superintendent Cindy Hill

**FROM** Select Investigative Committee

**SUBJECT** Response to Superintendent Hill E-mail of January 9, 2014.

The Select Investigative Committee has received your electronic mail of January 9, 2014, addressed to Special Counsel.

Preliminarily, Special Counsel has been retained by the Select Investigative Committee ("Committee") to assist it in its work. As you know, the primary function of the Committee is the investigation of allegations of misconduct by you and your leadership team during your tenure as the head of the Wyoming Department of Education, including those issues identified by the Governor's Inquiry Team Report of June 13, 2013.

Special Counsel is not independent; rather, they are tasked with representation of the Committee, their client. Special Counsel assisted the Committee with its presentation of the witnesses and issues that the Committee deemed appropriate for the hearings and its investigation.

For over eight months, you have had the report of the Governor's Inquiry Team, which contains 18 chapters describing allegations of mismanagement of the Department of Education, misappropriation of funds and other alleged improprieties which occurred during your administration. A separate confidential report was issued detailing complaints by some 18 employees about various personnel matters. Additionally, during 2012, individual members of the Legislature received reports regarding budgetary and personnel improprieties from employees of the Department. The Committee is primarily charged with determining whether any of the allegations that are detailed in the Governor's Inquiry Team Report are true and, if so, whether they constitute grounds to support articles of impeachment under Article 3, § 18 of the Wyoming Constitution. Further, the Committee is charged with determining whether any other legislative action might be appropriate to address any of the issues under investigation.

As confirmed in your letter to the Committee chair of October 22, 2013, after the Governor's Inquiry Team conducted its interviews, you and the members of your staff were given the opportunity to review Ms. MacPherson's interview summaries, and to correct any inaccuracies that were in the original report. That opportunity was not offered to the Department of Education employees who provided



information to the Inquiry Team. For that reason, the Committee determined that additional interviews of your staff were not necessary. The time and expense of doing so was simply not justified.

The Committee has the summaries of the interviews of your staff, as corrected. We assume that they are accurate and complete.

The Committee also has your list of 38 additional witnesses whom you request be interviewed or called to testify. Some of these individuals have been interviewed, but the Committee determined that they had no material evidence to provide. The Committee will consider and determine whether others are necessary for the completion of its work.

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The Committee did have in its possession the email exchange that is now in the record as Hill Exhibit 5. It was on the external hard drive containing 118 gigabytes of data that you produced in response to the Committee’s document subpoena of September 3, 2013. However, that communication in no way explains your instruction to departmental employees to remove references to programs in the 900 series Report to the Joint Appropriations Committee. We expect that the Committee’s report will address Hill Exhibit 5 in significant detail.

Cc:  
Members, Select Investigative Committee



Cindy Hill &lt;cindy.hill@wyo.gov&gt;

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**concerns and requests**

1 message

**Cindy Hill** <cindy.hill@wyo.gov>

Thu, Jan 9, 2014 at 10:46 AM

To: bsalzburg@crowell.com, rjarosh@hirstapplegate.com, klenhart@hirstapplegate.com  
Cc: mark.baker@wyoleg.gov, rosie.berger@wyoleg.gov, gregg.blikre@wyoleg.gov, kermit.brown@wyoleg.gov, Cathy.connolly@wyoleg.gov, Kathleen.davison@wyoleg.gov, michael.grear@wyoleg.gov, Representative Lubnau <tom.lubnau@wyoleg.gov>, mike.madden@wyoleg.gov, glenn.moniz@wyoleg.gov, john.patton@wyoleg.gov, ruth.petroff@wyoleg.gov, tim.stubson@wyoleg.gov, mary.throne@wyoleg.gov, Nathan.winters@wyoleg.gov, Dan.zwonitzer@wyoleg.gov

Special Counsel,

I am writing to make a few requests and outline a few concerns.

First, my concerns: Despite my many requests, neither you nor Chairman Lubnau ever advised me of what the allegations against me were, or provided me any documents supporting those allegations. As you can imagine, not having this information made it difficult for me to be helpful to the committee. I had provided all information and documents you requested and I trusted that you and the committee would be diligent in presenting all relevant information. Over the course of the three days of hearings it became evident that this had not occurred.

For example, Mr. Carroll and Mr. Hansen testified about a meeting where there was discussion about correcting a series of reports to be presented to the legislature. They testified that they were asked to make corrections to certain reports, but that they did not understand why they were being asked to do so. Chairman Lubnau characterized these corrections as "document scrubbing."

I learned of these concerns for the first time during these hearings. You had in your possession documents explaining, in detail, the purpose and intent of these actions. However, I learned during my testimony that you had not provided those to the committee members. Not only were you in possession of these documents, but so were Mr. Carroll, Mr. Hansen, and Don Richards of the Legislative Services Office.

This failure to provide relevant information resulted in confusion, suspicion, and what I believe may be perjury by some witnesses. I wonder if you have an obligation, as an attorney and an officer of this investigative panel, to bring this potential perjury to the attention of a district attorney for appropriate review and investigation?

There are many other areas where it appears that relevant – even essential – information was not brought to the Committee's attention. I am hopeful that as my witnesses are called, greater clarity will result.

Regarding my witnesses, as required by the Committee rules, I provided my witnesses list at the end of the hearing. However, I was asked to submit a final witness list by Friday, January 10, 2013. As I am refining that list, it would be helpful to know what, if any, allegations have not been determined by the Committee to be baseless. If you would advise me as soon as possible, I may be able to pare down my witness list. This will allow me to ensure that all relevant documentation in your possession is brought to the attention of the Committee, but that Committee time is not wasted on further refuting baseless claims.

Based on information reported by Leah Todd in the Casper Star, Chairman Lubnau initially suggested you to meet with me and my staff. However, as reported, a fiscal decision was made not to do so. I again invite you to meet with us as discuss these matters as I believe we could provide a great deal of helpful information to the Committee.

Finally, I ask that you provide to me all affidavits correcting inaccuracies in the MacPherson Report (or any other statement made under oath, such as that of Dianne Bailey). Additionally, I request to be provided all notes (electronic or otherwise) that witnesses referred to as they testified before the committee.

Thank you.

Cindy Hill

Superintendent of Public Instruction