IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

RUSSELL JOKI, and KATHLEEN I. JOKI, individually and as Guardians and Guardians ad litem of PEYTON LEE GIFFORD-JOKI, a minor of age 16 enrolled at Meridian High School; and SARAH C. HOLT, individually and as a Parent and Guardian ad litem of SABRINA HOLT and SOPHIA HOLT, children enrolled in Chief Joseph Elementary School in Meridian, Idaho; and VIKKI ASCUENA; DANIEL BRAINARD; DON and PATTIE COFFMAN; ANNE COMSTOCK; SHERYL HENLEY; SCOTT and KRISTI HENELY; RODNEY C. JOKI; JOE and MARALYN MURDOCK; CONNIE PULAMBO; ERIC and AIMEE SCHOOLEY; (Grandparents of Enrolled School Children in the cities of Kooskia, Kellogg, Coeur D'Alene, Meridian and Boise, and/or Citizens and Patrons of the School Districts in their respective cities); each Plaintiff in their own behalf and in behalf of all parents, grandparents, and guardians ad litem of all school age children in grades K-12 throughout the State of Idaho,

Plaintiffs,

vs.

THE STATE OF IDAHO; The HONORABLE TOM LUNA, Superintendent of Public Instruction; the IDAHO STATE DEPARTMENT OF EDUCATION; and the IDAHO STATE LEGISLATURE, and Aberdeen District #58; American Falls Joint District #381; Arbon Elementary District #383;

Case No. CV OC 2012 17745

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

Avery District #394; Basin District #72; Bear Lake County District #33; Blackfoot District #55; Blaine County District #61; Bliss District #234; Boise District #1; Bonneville Joint District #93; Boundary County District #101; Bruneau-Grand View Joint District #365; Buhl Joint District #412; Butte County District #111; Caldwell District #132; Camas County District #121; Cambridge #432; Cascade District #422; Cassia District #151; Castleford District #417; Challis District #181; Clark County District #161; Coeur D'Alene District #271; Cottonwood Joint District #242; Council District #13; Culdesac District #342; Dietrich District #314; Emmett District #221; Filer District #59; Freemont County Joint District #215; Fruitland District #373; Garden Valley District #71; Genesse District #282; Glenns Ferry District #192; Gooding Joint District #231; Grace Joint School District #148; Hagerman School District #233; Heritage Community Charter School District #481; Homedale Joint District #370; Highland School District #305; Horseshoe Bend School District #73; Idaho Falls District #91; Jefferson County Joint District #251; Jerome Joint District #261; Kamiah Joint District #304; Kellogg Joint District #391; Kendrick District #283; Kimberly District #414; Kootenai District #274; Kuna Joint District #3; Lake Pend Oreille District #84; Lakeland District #272; Lapwai District #341; Lewiston District #340; Mackay District #182; Madison District #321; Marsh Valley District #21; Marsing District #363; McCall-Donnelly District #421; Meadows Valley District #11; Melba Joint District #136; Meridian Joint District #2; Middleton District #134; Midvale District #433; Minidoka County Joint District #331; Moscow District #281; Mountain Home District #193; Mountain View District #244; Mullan District #392; Murtaugh District #418; Nampa District #131; New Plymouth School District #372; Nezperce District #302; North Gem District #149; Notus District #135; Oneida County District #351; Orofino Joint District #171; Parma District

#137; Payette Joint District #371; Pleasant Valley School District #364; Plummer-Worley Joint District #44; Pocatello/Chubbuck District #25; Post Falls District #273; Potlatch District #285; Prairie Elementary District #191; Preston Joint District #201; Richfield District #316; Ririe Joint District #252; Rockland District #382; St Maries Joint District #41; Salmon District #291; Salmon River Joint District #243; Shelley Joint District #60; Shoshone Joint District #312; Shoshone-Bannock Joint District #537; Snake River District #52; Soda Springs Joint District #150; South Lemhi School District #292; Sugar-Salem School District #322; Swan Valley District #92; Teton County District #401; Troy District #287; Twin Falls District #411; Valley District #262; Vallivue District #139; Wallace District #393; Weiser District #431; Wendall District #232; West Bonner County District #83; West Jefferson District #253; West Side District #202; Whitepine Joint District #288; Wilder District #133;

Defendants.

This matter came before the Court for court trial on September 30, 2015. The sole remaining Plaintiffs are Russell and Kathleen Joki, guardians of Meridian High School student Peyton Lee Gifford-Joki; and Sarah Holt, parent of Chief Joseph Elementary students Sabrina and Sophia Holt. The sole remaining defendant is Meridian Joint District #2.[1] Plaintiffs requested and were granted the opportunity to file amended Proposed Findings of Fact and Conclusions of Law in lieu of closing argument. Defendant waved closing argument and elected to stand on its original Proposed Findings of Fact and Conclusions of Law. Plaintiffs have submitted the amended proposed Findings. The matter is now ripe for decision.

[1] Meridian School District #2 is now known as the West Ada School District. The name change occurred at some point during the pendency of this case. No motion has been made to amend the caption and, for the sake of continuity in terminology used throughout the case, the Court will continue to refer to this Defendant as the Meridian School District.

I. PROCEDURAL HISTORY AND BACKGROUND

This case commenced as an action challenging the statewide system of funding for Idaho's public schools and the constitutionality of fees charged to students in public schools throughout the state. The suit was initiated on October 1, 2012 by Russell Joki and sixteen other individuals against the State of Idaho, the Superintendent of Public Instruction, the Department of Education, the Idaho State Legislature, and all 114 public school districts, plus one charter school. Plaintiffs sought to proceed by class action as representatives of a class consisting of all students currently enrolled in the defendant school districts together with their parents or guardians.

This Court earlier dismissed the State of Idaho, the Superintendent of Public Instruction, the Department of Education, and the Idaho State Legislature (State Defendants) from the action. In addition, fifty-three public school districts were voluntarily dismissed by Plaintiffs before being served. Following these dismissals, fourteen of the plaintiffs were granted leave to withdraw, leaving the current Plaintiffs as the remaining plaintiffs. On May 24, 2013, the Court issued a memorandum decision denying class certification and granting motions to dismiss all of the remaining defendants except the Meridian School District #2.

Pursuant to stipulation, Plaintiffs were granted leave to file a Second Amended Complaint on July 16, 2013. With the Second Amended Complaint, Plaintiffs seek to recover school fees paid by the named plaintiffs and proceed as class representatives in a class action representing patrons of the Meridian School District. The complaint alleges two causes of action. First, Plaintiffs seek reimbursement of certain fees imposed by the Meridian School District and a declaratory judgment that the imposed fees are unconstitutional. Second, Plaintiffs seek a declaratory judgment against the State Defendants that the current system of funding education in Idaho is unconstitutional. In November, 2013 the Court again dismissed the State Defendants for failure of Plaintiffs to exhaust their remedies against the local school district as required by the Constitutionally Based Educational Claims Act, I.C. §§ 6-2201 through 6-2216.

Following a period of discovery, Plaintiffs moved to certify the remaining claims as a class action on behalf of

> All children enrolled in Meridian Joint School District #2 public and charter schools, in grades K through 12, during the school year 2012–13 (and succeeding years during the pendency of this litigation) together with their parents, guardians and

other persons responsible for payment of fees to participate in Meridian's free common schools.

The Court denied class certification for reasons set forth in a decision entered June 27, 2014, primarily because of concerns over the suitability of the Plaintiffs as representatives of the proposed class. That decision and order gave Plaintiffs additional time to address the concerns raised by the Court in its initial decision. Following Plaintiffs' response and Defendant's reply, the Court entered another Memorandum Decision and Order on November 25, 2014 that denied class certification. [2]

Thereafter, Plaintiffs moved to alter or amend the decision pursuant to I.R.C.P. 59 (e). The Court treated the motion as a motion to reconsider under I.R.C.P. 11 (a) (2). The motion to reconsider was denied and the case was set for trial on the remaining issues in the case. The parties have submitted extensive proposed findings of fact and conclusions of law, many of which do not materially bear upon the remaining issues in the case. The Court limits this decision to determinations of fact material to resolution of the remaining issues.[3]

II. REMAINING ISSUES TRIED

1. What fees were paid by Plaintiffs as patrons of Meridian Joint District #2 on behalf of their wards or children during the school year 2012-2013 and years following?
2. Do Plaintiffs have standing to bring this action?
3. Were some or all of those fees unconstitutional?
4. If some or all of the fees are unconstitutional, what is the proper relief?

III. FINDINGS OF FACT

The Court makes the following findings of fact based on the evidence adduced at trial:

1. Russell Joki is the grandfather of Peyton Joki, Sabrina Holt and Sophia Holt. At the time this case was filed Peyton Joki was enrolled In Meridian High School as a junior. Sabrina Holt and Sophia Holt were enrolled as kindergartners in Chief Joseph Elementary School. The

[2] The decision was signed and served on the parties on November 14, 2014. There was an unexplained delay in entry of the decision on the Register of Action.

[3] For example, there was testimony regarding the building of football fields and gymnasiums and the "pay to play" policy of the school district which apparently requires the payment of a fee to participate in inter-scholastic athletics. There was no evidence that any of the students involved in this case participated in any interscholastic athletics for which a fee was charged or that a patron paid such a fee on their behalf.

caption of this case suggests that Kathleen Joki is a guardian of Peyton Joki and that Sarah Holt is the mother of Sabrina Holt and Sophia Holt, but there is nothing in the evidence that actually identifies them or explains their relationship to the case.[4]

2. During the 2012 – 2013 school year Peyton Joki was enrolled In Meridian High School as a junior. He enrolled for the 2013 – 2014 year as well and graduated high school in the spring of 2013. Meridian High School is operated by the Meridian School District.
3. During the 2012 – 2013 school year Sabrina Holt and Sophia Holt were enrolled in kindergarten at Chief Joseph Elementary School. Chief Joseph Elementary School is operated by the Meridian School District. There is no evidence in the trial record that Sabrina Holt and Sophia Holt continued to be enrolled in Chief Joseph Elementary School after the 2012 – 2013 school year. The only mention of their continued attendance is in the comments of counsel. Comments of counsel are not evidence.
4. Peyton Joki paid, or had paid on his behalf, fees for classes taken during his junior year. Those fees, and the explanation for each charge, are:

Chemistry Lab	$10	chemicals consumed in doing experiments
Food/Nutrition	$25	ingredients used by the students in the menus they prepare
Art/Pottery	$30	clay and glazes used by the students
Sports Medicine	$15	tape used by students
Junior Class Dues	$10	
Total	$85[5]	

No explanation was offered regarding the class dues. In the absence of any testimony, the Court declines to speculate as to the use to which these funds are put.

5. There is no evidence that Peyton Joki, or anyone on his behalf, paid any fees for his classes during his senior year. Although a Meridian High Transcript Request Form was admitted into evidence, there is no evidence that Peyton Joki requested a transcript or paid any fee.
6. In the fall of 2012, Russell Joki along with his daughter attended the registration of his granddaughters for kindergarten. At the time of registration his daughter did not have the funds to pay the $45 fee for each child. She was embarrassed to ask the principal for a waiver of fees. Russell Joki paid the fees on her behalf. In addition, the school asked "each

[4] This lack of evidence does not ultimately impact the findings of fact or conclusions of law made in this case.
[5] The testimony adduced at trial was not clear on all of the fees paid. At the close of trial the Court inquired as to the exact amount and nature of the fees. Plaintiffs' counsel was asked to include a list of the fees in the post-trial filings with Defendant's counsel given the opportunity to object if he disagreed. Defendant's counsel not having filed an objection, the Court is treating the list provided by Plaintiff's counsel as stipulated.

family to provide one ream of "8 ½" x 11" white copy paper. The record is silent as to whether Plaintiffs provided the requested paper.

7. There was no testimony regarding the payment of any fees or the provision of any classroom supplies on behalf of Sophia Holt or Sabrina Holt for any year following the 2012 – 2013 school year.
8. It is the practice of the Meridian School District that no middle school or high school student will be denied a class for lack of ability to pay fees. The student or parent may request through the principal of the school either a waiver of the fees or payment of fees in installments.[6]
9. It is the practice of the Meridian School District that a parent of an elementary student may seek a waiver of this requirement through a request made to the principal of the school the child is attending. The determination of whether to grant a waiver is made by the principal.
10. It is possible for a student in the Meridian School District to meet all of the requirements of graduation without paying a fee for class. In other words, there are sufficient classes available in the required subjects/topics that do not have an associated fee such that a student can obtain enough credits of the required types to graduate without ever paying a fee.
11. The Meridian School District decides whether to charge a fee for a particular class depending on whether the class calls for the use of "consumables." "Consumables" are items either used up by the student during the course of the class or which result in a product the student retains.

IV. CONCLUSIONS OF LAW

Based upon the facts found, the Court makes the following conclusions of law. To the extent that these Conclusions of Law refer to facts not set forth above, the same are perceived by the Court to be mixed questions of law and fact. Any such new facts should be construed as additional findings of fact.

[6] The court infers that installment payments are available based upon the deposition testimony of Dr. Clark.

A. STANDING

1. This is a constitutional challenge to the legality of fees charged by the Meridian School District to Peyton Joki as a condition to taking certain courses as a junior at Meridian High School. It is also a challenge to the fees charged to Sophia and Sabrina Holt to attend Chief Joseph Elementary School as kindergarten students. The outcome of this case is governed by Article IX, Section 1 of the Idaho Constitution This provision reads:

> "The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools."

2. Procedurally, this case is governed by The Constitutionally Based Educational Claims Act (CBECA), I.C. Title 6, Chapter 22. CBECA confers standing on "Any person who is a schoolchild, the parent or guardian of a schoolchild, or the parent or guardian of a child who will enter public school in the next two (2) years…" Russel Joki is the guardian of Peyton Joki and therefore he has standing to seek recovery of fees paid by or on behalf of Peyton Joki.
3. As to Sophie and Sabrina Holt, Russell Joki is not a patron of the School District because he is neither their parent nor guardian. Joki lacks standing to seek recovery of the fees paid on behalf of the Holt sisters.
4. Sarah Holt would have standing to seek recovery of the fees paid on behalf of the Holt sisters if she had proven the allegation in the complaint that she is their mother. She did not appear and testify at trial and no evidence was introduced in support of that allegation. The allegation was not admitted in the answer filed by Defendant. Nor is this a fact of which the court may take judicial notice. Sarah Holt does not have standing.

B. WERE SOME OR ALL OF THE FEES UNCONSTITUTIONAL?

5. The direct challenge here is to the requirement that the school be "free," but the issue of what is a "thorough" education is also implicated.
6. At first glance, it would seem that "free" means "free." That is, something that is provided without charge, or not costing any money. However, language in *Paulson v. Minidoka*

County[7] suggests it may be appropriate to require students to pay for some items as a condition of attending school:

> Unlike pencils and paper, the student has no choice in the quality or quantity of textbooks he will use if he is to earn his education. He will use exactly the books, prescribed by the school authorities, that his classmates use; and no voluntary act of his can obviate the need for books nor lessen their expense. School books are, thus, indistinguishable from other fixed educational expense items such as school building maintenance or teachers' salaries. The appellants may not charge students for such items because the common schools are to be 'free' as our constitution requires. *Paulson v. Minidoka Cnty. Sch. Dist. No. 331*, 93 Idaho 469, 472-73, 463 P.2d 935, 938-39 (1970).

This language in *Paulson* is apparently the justification of the fees charged in this case. In particular, *Paulson* distinguishes between "pencils and paper" and textbooks. Defendant takes from the *Paulson* case that a school district is free to charge fees so long as it is for "consumables"[8] or results in something tangible the student may consume or take-home.[9] Defendant has some support in this. Exhibit 12 stipulated into evidence contains *Guidelines for the Charging of Student Fees* adopted by the State Board of Education in 1970. Former State Superintendent Evans also referred to this in his testimony. Those guidelines suggest that a student may be required to "furnish items which are consumed on an individual basis, if the quality and quantity of such items are not prescribed." It is but a short step from there to have the school provide the item at the student's expense.

7. This interpretation places entirely too much weight on the distinction drawn in *Paulson*. The real distinction drawn in *Paulson* was the difference between educational activities and extracurricular activities. The Supreme Court defined "extracurricular activities" as items "outside of or in addition to the regular academic courses or curriculum of the school." A mandatory charge levied on students whether they participate or not in the activities is improper under the Idaho Constitution. Where the fees for extracurricular activities are optional, they do not contravene the Constitution. That is one teaching of *Paulson*.
8. Defendant suggests that because a student may chart a course through junior high and high school to graduation without paying fees, the school may charge for some of its classes. This implicates the question of what constitutes a "thorough" education. At what point is a course offering so extraneous to a regular academic course so as to be not part of a

[7] 93 Idaho 469, 463 P.2d 935 (1970)
[8] *E. g.*, the tape in Peyton Joki's Sports Medicine class and the chemicals for the Chemistry Lab class.
[9] *E.g.*, the sculpture fashioned with the clay in Pottery class.

thorough education? The complete answer to that question is beyond the scope of the evidence presented in this case.[10] The question here is whether the Defendant is providing a *general, thorough and free* education to Peyton Joki. The Court concludes it is not. The fees charged Peyton Joki at issue in this case are not the equivalent of pencils and paper a student might be expected to bring to school. Where a class is offered as part of the regular academic courses of the school, the course must be offered without charge. Based upon the evidence available in this case, the best determinant of whether a class is part of the regular academic course of the Defendant is whether academic credit toward graduation is granted for the class. In Peyton Joki's case, this seems to be true for everything except Junior Class Dues. In the Exhibits concerning the courses and course fees there is no description of "Junior Class" as an academic course.

9. In the *Paulson* case the court was dealing with a fee that combined charges for textbooks and charges for extracurricular activities. As to the portion of the levee attributable to extracurricular activities the court held:

> A levy for such purposes imposed generally on all students whether they participate in extra-curricular activities or not, becomes a charge on attendance at the school. Such a charge contravenes the constitutional mandate that the school be free. *Paulson v. Minidoka Cnty. Sch. Dist. No. 331*, 93 Idaho 469, 472, 463 P.2d 935, 938 (1970).

As to the Junior Class Dues, nothing in the record suggests they were voluntary. The class dues appear to fall in that category of charges described in Paulson as a "charge on attendance at the school." As such, they are impermissible.

10. Defendant also suggests that the fees are proper because the student (or student's parent) can seek a waiver of the fees through the principle of the school the student is attending. The underlying logic to that argument is that the constitutionality of the fee charged depends upon the financial circumstances of the parent involved. If a student or the student's parents cannot afford the fee, they are required to pay and it does not offend the Constitution. If the student or the student's parents cannot afford the fee, they are not required to pay it and therefore requirement that the education be "free" is met.

[10] The answer to that question is more properly focused in a circumstance where the complaint is that a course is missing that should be present. For example, does a thorough education require the teaching of language arts and literature in the high school or may an education be complete with that received through middle school? Happily, we are not faced with that question here.

11. The alternative logic is that only those classes offered without charge are part of the constitutionally required thorough education. There is nothing in the evidence to support this proposition. As Dr. Clark pointed out in her testimony, parents regularly have to make choices concerning what their children may have or not have. A parent may be forced to tell their child "Drill team is beyond our means." Certainly some families are able to afford things that other families are not. A family may be forced to choose between buying a boat or a trip to Disneyland because they cannot do both. What a family should not be forced to choose is whether one child may take advanced placement history or another take heavy duty diesel repair when they cannot afford both. Nor should students or their parents be required to purchase their education on the installment plan. Nor should students or parents be required to seek charity, which may or may not be granted, to enable a child to take a class offered by a school district for credit toward graduation. The fact that the fees may be waived in the discretion of the principle of the building does not render them constitutional.
12. Plaintiffs are not required to comply with the Idaho Tort Claims Act, I.C. §6-901 *et seq.,* to seek recovery for fees improperly charged and paid. Just as the Idaho Tort Claims Act does not apply to an action based upon I.C. §63-3074, it does not apply to an action brought under CBECA. *Greenwade v. Idaho State Tax Comm'n,* 119 Idaho 501, 808 P.2d 420 (Ct. App. 1991). *Greenwade* involved a suit by a taxpayer that alleged his property had been illegally taken to satisfy unpaid taxes. The court held that the Tort Claims Act did not apply because the claim for return of property erroneously or illegally seized for payment of taxes did not fit the definition of a claim for tort damages. The court rejected the argument that I.C. § 6-904A[11] required the filing of a tort claim. The court noted that the Idaho Income Tax Code specifically authorized the suit. Further, by definition, the term "claim" as used in the Tort Claim Act means claims for damages arising from tortious conduct. A claim for the return of property erroneously or illegally seized for payment of

[11] As quoted in the opinion, the statute at the time read the same as it does today:

> Exceptions to governmental liability. -- A governmental entity and its employees acting within the course and scope of their employment and without malice or criminal intent and without reckless, willful and wanton conduct as defined in section 6-904C, Idaho Code, shall not be liable for any claim which:
>
> 1. Arises out of the assessment or collection of any tax or fee . . . .

119 Idaho 504,808 P.2d 423.

taxes does not fit the definition of a claim for tort damages. In this case, the suit is for return of monies unconstitutionally taken in the form of charges for taking a class or attendance at school. CBECA mandates that this action be brought under CBECA rather than the Tort Claims Act. I.C. §6-2205 (1).

13. I.C. § 6-2209 (4) (d) authorizes the District Court to issue "any order that it determines would assist the local school district in providing constitutionally required educational services." Given the limited nature of the evidence and claims in this case at this point, the Court has found the Defendant School District did not provide all constitutionally required educational services to Peyton Joki.

C. APPROPRIATE REMEDY

14. The remedies delineated in CBECA are largely concentrated on correcting underfunding or the misuse of funds,[12] but the act is not confined to only issues of underfunding and misuse of funds. CEBCA provides that "the district court may issue *any order* that it determines would assist the local school district in providing constitutionally required educational services." I.C.§6–2209(4)(d) (emphasis added). CBECA defines constitutionally required educational services as those "services that must be provided under section 1, article IX of the constitution of the state of Idaho." I.C. § 6-2202. Thus, the Act contemplates any claim implicating the school district's provision of constitutionally required educational services—in this case, the provision of free common schools. The only case to discuss the scope of remedies available under CBECA suggests the Court may fashion any remedy available in law or equity to ensure a school district's constitutional compliance. In a case where the trial court found CBECA unconstitutional because it limited the remedies available to a court, the Idaho Supreme Court held:

> These provisions [referring to I.C. §§ 6-2209 through 6-2211] are not limitations on the power of the district court; instead, those statutes grant the district court the authority to enter specific orders against the school district regarding the use of its resources. They are not an infringement of the judicial power, but an expansion of it. *Osmunson v. State,* 135 Idaho 292, 298, 17 P.3d 236, 242 (2000).

[12] The Court may (1) enjoin a school district from offering non-mandated services, (2) enjoin a school district from offering services in a manner that consumes more resources than necessary, or (3) order a school district to impose authorized levies in the maximum amount allowed by law. I.C. § 6-2209(4).

The *Osmanson* court then quoted I.C.§6–2209(4)(d) and stated "We are unable to determine what remedies the district court found to be unconstitutionally foreclosed." 135 Idaho 292, 298, 17 P.3d 236, 242 (2000).

15. The events giving rise to this case and the claims presented at trial occurred three years ago. Peyton Joki has graduated high school and prospective relief is not appropriate. An injunction would provide no relief to Peyton Joki or his grandfather/guardian. Nor would further inquiry into the allocation of resources made by Meridian School District provide information that would benefit this Plaintiff on the claims that remained for trial.
16. Under the circumstances of this case, the appropriate remedy is in order requiring the Meridian School District to restore the monies to Russell Joki that he was improperly forced to pay.
17. Given the result reached, a declaratory judgment is not appropriate. The monetary remedy granted affords complete relief under the circumstances. A declaratory judgment would not provide any additional relief.

D. OTHER AFFIRMATIVE DEFENSES

18. Defendant asserted twenty-one defenses in its answer. All of those defenses have either been discussed and determined,[13] apply to other claims raised in the complaint that were not at issue in this trial,[14] are incompletely pled[15], or have been abandoned.[16] They will not be further discussed.

E. ADDITIONAL HOLDINGS IN THE EVENT OF APPEAL

19. The Court has determined that there is insufficient evidence in the trial record to prove Sarah Holt is the parent of the Holt sisters. The Court has also determined that Russell Joki does not have standing to seek recovery of the monies paid on behalf of the Holt sisters for their kindergarten fees. In the event either of these rulings should be reversed on appeal,[17]

[13] *E.g.*, Fifth Defense – failure to comply with the Tort Claims Act.
[14] *E.g.*, Fourth Defense – the purported class cannot be certified under I.R.C.P. 23.
[15] *E.g.*, Thirteenth Defense – statute of limitations.
[16] *E.g.*, Twenty-first Defense – violation of The Idaho Rules of Professional Conduct.
[17] It is certainly possible to read CBECA as conferring standing on Russell Joki on this issue. The statute confers standing on a patron to "bring suit against the local school district in which the schoolchild or potential schoolchild resides on the ground that the local school district is not providing constitutionally required educational services." The statute does not require, on its face, that the suit to be limited to the services provided to the patron's child. While this Court has ruled that this limitation exists as part of the fundamental requirement of standing, and on that grounds severely limited the evidence allowed at trial, the Court recognizes a contrary interpretation is possible.

the Court makes the following Conclusions of Law for whatever benefit they may be on appeal.

20. Defendant suggests it is free to charge for kindergarten because the Defendant is not required by law to provide kindergarten. This is incorrect. Other than a few exceptions contained in Title 33 Chapter 16, the legislature does not require that school districts offer a particular set of classes. Children under age seven or over age 16 are not required to attend school. Ultimately the determination of what constitutes a thorough system of education and the appropriate curriculum is, for the most part, left to the individual school districts. See I.C. §33-1612; *Thompson v. Engelking*, 96 Idaho 793, 537 P.2d 635 (1975). The decision to offer kindergarten simply represents a decision by the Meridian School District that kindergarten is part of a thorough education. Having determined that kindergarten is a part of its regular curriculum, the Meridian School District is not free to ignore the mandate of the Idaho Constitution that the education be free. The same rules that apply to schools in general apply to kindergarten.
21. With regard to the kindergarten fees charged the Holt sisters, the fees have four components – milk for snacks, field trips, school supplies, and art supplies. There is no indication that taking the field trips or receiving the daily milk is voluntary. There is no breakdown for the cost of the school supplies. This appears to be a levy against every student for the privilege of attending kindergarten. The $10 Art Supply fee is subject to the same considerations as the Chemistry Lab fee charged Peyton Joki. The class fees charged the Holt sisters to attend kindergarten were impermissible fees under the holding in *Paulson*.
22. The events giving rise to this case and the claims presented at trial occurred three years ago. The Holt sisters are no longer in kindergarten. The only claim pled on their behalf was the charging of fees for kindergarten. Because they will not be repeating kindergarten, prospective relief is not appropriate. An injunction would provide no relief to Plaintiffs. Nor would further inquiry into the allocation of resources made by Meridian School District provide information that would benefit Plaintiffs on the claims that remained for trial.
23. Under the circumstances of this case, the appropriate remedy is in order requiring the Meridian School District to restore the monies to Sarah Holt that Russell Joki paid on her

behalf to enroll the Holt sisters in kindergarten. The fact that someone paid the fees at her request on her behalf does not render the charging of the fees constitutional nor entitle Meridian School District to retain them.

24. Given the result reached, a declaratory judgment is not appropriate. The monetary remedy granted affords complete relief under the circumstances. A declaratory judgment would not provide any additional relief.

V. CONCLUSION

These Findings of Fact and Conclusions of Law are intended to be the end of this case. The Court believes that all of the issues fairly raised by the pleadings and the evidence have been dealt with. This case is ready for entry of a final judgment which should include reiteration that the State Defendants have been dismissed. Counsel for the Defendant is directed to submit a proposed judgment complying with I.R.C.P. 54 (a) that includes dismissal by name of all of Defendants previously ordered dismissed, denial of the maintenance of a class action, and the order specified in these Findings of Fact.

IT IS SO ORDERED.

Dated this _____ day of November, 2015.

_____
RICHARD D. GREENWOOD
District Judge

CERTIFICATE OF MAILING

I hereby certify that on this _____ day of November, 2015, I mailed (served) a true and correct copy of the within instrument to:

Brian K. Julian ANDERSON, JULIAN & HULL P. O. Box 7426 Boise, ID 83705-7426	[ ] [ ] [ ]	U.S. Mail, postage prepaid Hand-Delivered Overnight Mail
Robert C. Huntley THE HUNTLEY LAW FIRM P.O. Box 2188 Boise, ID 83701	[ ] [ ] [ ]	U.S. Mail, postage prepaid Hand-Delivered Overnight Mail
Michael S. Gilmore Idaho Attorney General P.O. Box 83720 Boise, ID 83720-0010	[ ] [ ] [ ]	U.S. Mail, postage prepaid Hand-Delivered Overnight Mail
Ritchie Eppink (Amicus Curiae)	[ ] [ ] [ ]	U.S. Mail, postage prepaid Hand-Delivered Overnight Mail

CHRISTOPHER D. RICH
Clerk of the District Court

By:_____
Deputy Court Clerk