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BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

IDAHO SUPERINTENDENT OF PUBLIC)
INSTRUCTION SHERRI YBARRA, in her)
official capacity,)
)
Petitioner,)
vs.)
)
THE LEGISLATURE OF THE STATE OF)
IDAHO, BY REPRESENTATIVE SCOTT BEDKE)
in his official and representative capacity as)
SPEAKER OF THE HOUSE OF)
REPRESENTATIVES AND SENATOR BRENT)
HILL, in his official and representative capacity as)
SENATE PRESIDENT PRO TEM and THE)
IDAHO STATE BOARD OF EDUCATION by)
DEBBIE CRITCHFIELD, in her official and)
representative capacity as PRESIDENT OF THE)
BOARD,)
)
Respondents.)

Docket No. 47991-2020

DECLARATION OF MARILYN
WHITNEY, DEPUTY OF POLICY
AND COMMUNICATION IN
REPLY TO THE RESPONSES
TO THE VERIFIED PETITION

I, Marilyn Whitney, declare and state as follows:

1. I am the Deputy of Policy and Communication for the Idaho Department of Education and work directly with and for the Superintendent of Public Instruction in that capacity.

Previously, I served as the Senior Special Assistant for Education and Government Services and

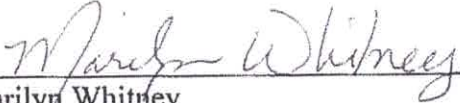
Deputy Chief of Staff for Governor Butch Otter. I have personal knowledge of all of the matters stated herein.

2. Attached hereto and incorporated herein as Exhibit "1" is a chronological description of various meetings, contacts and conversations which I had during the 2020 Legislative Session between January 21 and March 2, 2020 regarding Senate Bills 1409 and 1410.

3. I regularly and accurately communicated the information imparted to me about said Bills in person to the Superintendent of Public Instruction when the same was received.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 22nd day of May, 2020.


Marilyn Whitney

Marilyn Whitney

Documentation of Meetings and Conversations regarding the Superintendent of Public Instruction's (SOPI) budget.

Tuesday, January 21, 2020 at approximately 3:00 p.m.

Ms. Whitney had a hallway conversation with a prominent lobbyist who told her that there were Senators talking about running a bill to change the Idaho Constitution to have the Supt. of Public Instruction become an appointed position rather than an elected position. She was told that the proponents of this move were Senators Crabtree, Woodward and Agenbroad, all of whom are members of JFAC.

Following adjournment of the Senate Education Committee @ approximately 5:00 p.m., Ms. Whitney asked Sen. Crabtree if what she had heard was true. He confirmed that there had been conversations about making this change. He said that the legislature was not happy with how education was structured and how it was managed. He said that everyone knew "Sherri doesn't get along with other board members." Ms. Whitney said that wasn't true and that the Supt.'s relationships with board members was better than it had ever been. Sen. Crabtree said that running a bill to amend the Constitution and then having to get signatures on petitions was too hard, so they were not going to pursue it. He did not indicate that he or the Legislature were pursuing any other course of action.

Wednesday, February 19, 2020 at approximately 5:30 p.m.

Ms. Whitney was approached by Will Goodman, a director at IDLA and former chief technology officer at SDE, at the Superintendents' Network reception. He asked her to follow him into the hallway where they would not be observed. He said he was concerned about being seen talking to her. He said that there were legislators who were planning to move the SDE's Technology Services group to the Office of the State Board of Education. He indicated that he had conversation with JFAC members about a proposal, but would not confirm who the legislators were. He said he told the legislators he had talked to that such a move would be "devastating" and urged the legislators not to pursue such a move. He did not name the legislators.

Thursday, February 20, 2020 approximately 9:30 a.m.

Ms. Whitney met with Rep. Sally Toone in the SDE offices. Rep. Toone had stated she did not want to meet in the Capitol building because it was difficult to have a private conversation in her area. She said that the education budget working group was being pushed to strip Supt. Ybarra of several of her program areas including technology services, assessment and accountability and teacher certification. She said that Rep. Horman was coordinating this effort and that Sen. Crabtree was helping her. She indicated that the conversations about this had been contentious and there were some on the working group who were opposed to doing this. She indicated that they might focus on just one area this year, because doing all three was too many. I asked her the reason and she said that those pushing this do not like having an elected superintendent. She also said Rep. Horman was trying to kill the higher education budget that JFAC had passed earlier in the week because the motion that prevailed was not the one she put forward. Rep. Toone indicated that if Rep. Horman did not agree on the motions, she would try to kill budget bills on the House floor.

EXHIBIT "1"

Approximately 1:00 p.m.

Ms. Whitney met with Chairman Mortimer. She asked if he was aware of the conversations about moving technology services from the SDE to the OSBE. He said he had just heard about it and was glad he was not in the middle of it. He added that “the Board has been working on that for a couple of years.”

Friday, February 21, 2020 at approximately 9:00 a.m.

Ms. Whitney and Mr. McMurtrey met briefly with Sen. Grow, a member of JFAC and of the education budget working group. Ms. Whitney asked him if he was aware of a plan to move technology services from the SDE to OSBE. He said he was aware, but he wasn't pushing for it. He asked about the Supt.'s relationship with the Board. Ms. Whitney said the Supt. has a very positive relationship with the Board and that it was stronger than it had ever been. Sen. Grow then asked whether the Supt. had a good relationship with Linda Clark. Ms. Whitney said yes, that they worked well together.

Approximately noon

Ms. Whitney and Mr. McMurtrey met with Rep. Paul Amador as he was leaving the House Floor. He is a member of JFAC and of the education budget working group. Ms. Whitney asked him about the rumors there was a plan to move technology services from SDE to OSBE. He said he had been more focused on the higher education budget and wasn't closely involved with the K-12 budget. He said he was not pushing to move the technology group out of SDE.

Approximately 12:45

Ms. Whitney had a phone conversation with Sen. Janie Ward-Engelking who serves on JFAC and is a member of the education budget working group. Sen. Ward-Engelking said that Rep. Horman and Sen. Crabtree didn't want an elected superintendent and that they were going to strip the superintendent of her authority through the budget process. She also indicated that this was retaliation because Supt. Ybarra did not support Rep. Horman's bill to implement a new public schools funding formula the previous session. The senator said that she and others had pushed back hard on moving the three programs – IT, assessment and accountability and teacher certification – out of the SDE, and that the Co-Chair had weighed in with the working group to say that was too much. However, Rep. Horman and Sen. Crabtree were still pushing to move the technology group.

Approximately 1:00 p.m.

Ms. Whitney and Tim McMurtrey, Deputy Supt., Operations, met with Sen. Jim Woodward, a member of JFAC and the education budget working group. He said he had not really been working on this issue and asked who we had talked to. We indicated we were talking to all the members of the working group as quickly as possible but that we had been unaware this was even being considered. He seemed surprised and suggested we try to talk to Rep. Britt Raybould, who was very involved. He listened to our concerns but was noncommittal.

Approximately 2:30 p.m.

Ms. Whitney and Mr. McMurtrey met with Sen. Carl Crabtree. He confirmed that the education budget working group was planning to move technology services from the SDE to SBOE. He said the Board had no objections. He said he was aware that the Supt. had called the Governor and President Critchfield about the matter, and it wouldn't do any good for her to "stomp her feet" and throw a fit about it. He said everyone knew the Supt. didn't get along with the Board. Ms. Whitney said that wasn't true and that the Supt.'s relationship with the Board was stronger than it had ever been. The senator said that he had some hope a year ago that the Supt. would listen to him and decide to work with Rep. Horman on the new funding formula. He referenced a Dec. 2018 meeting he had with Supt. Ybarra, Mr. McPherson and Mr. McMurtrey. He said that the 2019 session was the Supt.'s chance to mend fences and help the Speaker get the new funding formula through, which the Speaker really wanted. But, she didn't cooperate, so this was retaliation. He said it was up to the Supt. to fix the bad relationship with Rep. Horman. Sen. Crabtree said that Ms. Whitney had supported such a move six years ago. Ms. Whitney replied that was a long time ago, there had been no formal or substantive discussion about it, and that things had changed. Sen. Crabtree then said that the only thing that had changed was who signed Ms. Whitney's paycheck. Mr. McMurtrey told the senator that moving the technology group would be detrimental to the school districts. The senator said it wouldn't change anything other than who Chris Campbell reported to. He said the board should have authority anyway and that everyone knows there are problems with bad data and the SDE's responsiveness. When pressed for examples, he gave none. He said the Supt. needed to provide LSO with a plan to break out personnel. He then told Ms. Whitney and Mr. McMurtrey that everyone knew the SDE was a "toxic" work place and that there were people lined up down the street to attest to what a terrible place it was to work. Ms. Whitney and Mr. McMurtrey asked him what he was talking about and he mentioned the whistleblower lawsuit.

Monday, Feb. 24, 2020 at approximately 10:00 a.m.

Ms. Whitney and Supt. Ybarra met with JFAC co-chairs Sen. Bair and Rep. Youngblood. They were surprised that the Supt. and SDE had not had discussions with the JFAC education budget working group about the proposed move of the Technology Services group. The Supt. explained that we had learned about it late the previous week, and that she and her staff had reached out to members of the working group to see if the rumors she had heard were true. Based on Marilyn Whitney and Tim McMurtrey's meetings on Friday, Feb. 20th, she understood the rumors were true. Rep. Youngblood said he would check into why the Supt. had not been consulted. Sen. Bair said that the State Board of Education had been consulted and were aware of JFAC's intentions. He also explained that the co-chairs don't get involved but let the working groups who craft each budget do their work.

At 1:00 p.m.

The Supt. joined a meeting of her staff (Marilyn Whiney, Chris Campbell, Tim Hill and Louie Konkol) and Robyn Lockett, Paul Headlee and Janet Jessup from the Legislative Services Office (LSO). The previous week, on Feb. 19th, Robyn Lockett had asked SDE staff (Marilyn Whitney and Louie Konkol) for a breakout of FTP for each of the SDE's 16 programs. She had asked to receive it by Monday, the 24th at noon.

At this meeting, LSO staff talked initially about needing the breakout for several programs but then focused in on the Technology Services group and how to carve ISEE out of the SDE's budget. The Supt. and her staff explained that it would be very difficult to do this as staff in that group had multiple responsibilities both ISEE and non-ISEE related. LSO staff asked for the FTP breakout and a way to break ISEE out no later than Thursday, Feb. 27th. The Supt. reiterated that this would not be practical or feasible in the short timeframe and that the system was integrated with other SDE functions.

At 3:30 p.m.

Ms. Whitney, Chris Campbell, Tim Hill and Louie Konkol met with Rep. Horman and Rep. Kauffman, both are members of JFAC. Rep. Horman said the decision had been made to make this move, and that she and others have difficulty getting data and/or accurate data from the SDE. Mr. Hill asked for a specific example, but she did not give any specific instances. She said the move would not be a problem for districts as "nothing would change." She said the group would remain in their current offices and that nothing would change except that they would report to the Board rather than the Supt. She said the Board is the State Education Agency (SEA) and already has authority over the data system and the SDE is an agency of the Board so this was just a matter of where the money and FTP were allocated. Ms. Whitney pointed out that there was no plan to make this transition; Rep. Horman said it was her understanding that LSO had asked the Supt. for a plan earlier that day. Mr. Campbell attempted to explain the integrated and overlapping functions within the technology services group. Rep. Horman said it was up to the SDE to provide a breakout by the Thursday afternoon. She said she had another meeting to attend. When she left, Rep. Kauffman asked Ms. Whitney if she had another minute and then asked her what this was all about. He said Rep. Horman had asked him to come to the meeting with her but that he doesn't work on the education budget so wasn't familiar with the discussions that were going on. Ms. Whitney told him that numerous legislators had told her it was retaliation because the legislature had not been successful in passing a bill to implement a new funding formula.

Wednesday, February 26, 2020 at approximately 8:45 a.m.

Ms. Whitney met with Sen. Ward-Engelking in her office. She indicated they had an education budget working group meeting at noon and would be trying to finalize the K-12 budgets. She said she would make a motion to support the Superintendent's request and the Governor's recommendation for a maintenance budget for SDE but that there would be a motion to move the technology group. She didn't know how much support there would be for her motion. She reiterated that she did not support stripping the superintendent of her authority and that she supported an elected superintendent so that voters have a say. Ms. Whitney indicated that the Supt. was sending a letter to JFAC with her concerns about the proposed move.

Approximately 3:45 p.m.

Ms. Whitney, Chris Campbell, Tim Hill and Louie Konkol met with Sen. Grow, in his offices. Mr. Campbell and Mr. Hill explained why moving the technology services group would be difficult and problematic for the department and school districts. Sen. Grow said he was not advocating for this. He indicated he was

supportive of the Superintendent and the SDE. He quickly dismissed the conversation about the technology services move and asked questions about the Governor's career ladder calculations.

Thursday, Feb. 27, 2020 at 3:15 p.m.

The Supt., Peter McPherson and Marilyn Whitney met with Sen. Bair and Rep. Youngblood. Sen. Bair and Rep. Youngblood were clearly frustrated that the Supt. continued to say she had not been consulted. He reiterated that Matt Freeman absolutely knew about the proposed move and had been consulted. He went back to his calendar to refer to a date in early February when Mr. Freeman had been contacted and the proposed move had been discussed. Bair told the Supt. "this is about relationships."

Friday, February 28, 2020 at approximately 7:45 a.m.

Ms. Whitney met with Chairman Lance Clow regarding the potential move. He indicated he had reached out to Chairman Youngblood and asked why this was being done in JFAC and without consulting with the Supt. and SDE. He indicated that Rep. Youngblood told him that the Board knew all about it. Chairman Clow expressed his concern that this was a policy issue that should not be decided in the appropriations process. He also said he was aware that Rep. Horman blamed Ms. Whitney, Mr. Hill and Supt. Ybarra for her failure to get a new funding formula through the process the previous year.

Monday, March 2, 2020 at approximately 4:00 p.m.

Ms. Whitney and Mr. McMurtrey met with Sen. Crabtree. He said that the motion coming out of JFAC would be to move the technology services group from the SDE to OSBE. Ms. Whitney expressed her disappointment. Mr. McMurtrey asked if the Board of Education was really prepared to take this on. The Senator's response was "absolutely."

Note: The only member of the education budget working group staff were unable to meet with was Rep. Britt Raybould. Numerous attempts were made, but she did not respond.