

DAVID H. LEROY
Attorney at Law and
Special Deputy Idaho Attorney General
802 West Bannock Street, Ste 201
Boise, Idaho 83702
Telephone: (208) 342-0000
Facsimile: (208) 342-4200
Idaho State Bar No. 1359
dave@dleroy.com

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 SHERRI
YBARRA, IDAHO
SUPERINTENDENT OF PUBLIC
INSTRUCTION, IN REPLY TO
THE RESPONSES TO THE
VERIFIED PETITION

I, Sherri Ybarra, declare and state as follows:

1. I am the Petitioner in this case in my official capacity as the elected Idaho State Superintendent of Public Instruction. 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 regarding Senate Bills 1409 and 1410. Upon that knowledge, together with like information communicated to me by my staff, I asserted upon information and belief in Paragraph 28 of the Verified Complaint the intent of certain individual legislators for passing said Bills.

3. I reiterate and respond that the 21 employees Technology (Services) Group of the State Department of Education are the "nerve center" and control management point for all operations, communications, data storage and programs affecting and controlling public schools and education at the elementary and secondary level statewide. The detail contained in Exhibits "A", "B", "C" and "D" to the Verified Petition is critical to this understanding:

A. Exhibit "A" is an overview properly describing the team as a "support unit with a variety of roles intertwined with those of the rest of the divisions of the SDE," giving "assistance to SDE programs and staff as well as direct support to external stakeholders including school district personnel and students." It also describes in some detail the Broadband programs and Infrastructure Improvement Grant and emphasizes the Business Operations and essential work done within the Department. Finally, and appropriately last, it describes the Idaho System for Educational Excellence, the program at issue herein.

B. Exhibit "B" is a set of diagrams illustrating that the structure of the Technology (Services) Group is fully integrated into the entire organization of the Department of Education, is one unit of approximately sixteen, but is the only

computer center for all employees and operations.

C. Exhibit “C” contains a position by position detailed description of the duties of each of the twenty one jobs in the Technology (Services) Group. I communicated this document to the President of the Board of Education on April 3, 2020 in an attempt to convince her and the Board that these employees were much more than mere data security persons working on ISEE.

D. Finally, Exhibit “D” is a program by program outline and confirmation that the Technology (Services) Group interfaces, supports, interacts and manages computer related details and data for myself and every one of the 117 other employees in the Department of Education on a daily basis. The internal operations and sub-departments thusly interrelated and illustrated include Public School Finance, Assessment and Accountability, Federal Programs, Special Education, Teacher Certification, Student Engagement, Content and Curriculum, School Choice and Student Transportation. To leave all of these operations and employees without daily, direct access to computer services is close to the doors of the Department. Obviously, the 3 computer employees proposed to remain with the Department can not assume all of the roles and duties now discharged by 21 persons.

4. Attached hereto as Exhibit “@” is a “Daisy Diagram” which shows the comparatively limited scope of the ISEE program which is used as a justification to “centralize operations” and eliminate my employees. This should be contrasted with the actual wide range of operations and

duties of the Technology (Services) Group within the full Department as described in Paragraph 3 and Exhibits “A” through “D” above.

5. The 2020 Session of the Idaho Legislature convened on January 6. Approximately six weeks later I began to hear rumors that a few legislators might attempt to use the Joint Finance and Appropriations Committee, rather than either the House or Senate Education Committees, to introduce a measure to remove the departmental IT division from my control.

6. Idaho Code Section 33-133 is primarily focused upon student data security to accord with national concerns. The Statement of Purpose for Senate Bill 1372, which became the law described both that narrow goal and a limited role envisioned for the State Board of Education in implementing it:

“Protection of students information is a paramount duty of the State of Idaho and its local school districts. This must be balanced with the need for information to inform education decision making. This legislation provides definitions, sets forth the procedure for sharing information, sets forth the procedure for changing data collected, and requires reporting to the legislature. It mandates that the Office of the State Board of Education develop model policy for districts and requires districts to develop their own data security policy.”

Had Idaho Code Section 33-133 been proposed for statutory amendment or clarification before a germane committee, a public and open discussion of the relevant policy and potential problems outlined in paragraphs 3 and 4 above with an IT transfer could have been properly considered by the legislature.

7. Instead, in late February the demanded transfer was presented to me and my staff as an accomplished and final decision in which the only remaining question was “Which three of your

personnel positions do you wish left behind?” I attempted to inform LSO staff and any legislator who would listen that the interconnectivity of the Technology (Services) Group with the entire operation of the Department and other broad duties of the Group made any such a division unworkable and impossible.

8. Representative Lance Clow, attempting to assist the Department in its defense from the attack, on March 13, 2020 asked the Idaho Attorney General’s Office to issue a written opinion upon both the constitutional division of authority between the Superintendent and the Board and the effect of Idaho Code Section 33-133 upon the issue. On March 16, 2020 Deputy Attorney General Leslie Hayes responded with the opinion attached as Exhibit “3”. Upon the constitutional question the opinion suggests that until this Court opines the answers are uncertain. However, at page 4 of the opinion, Deputy Hayes states that the Idaho Code 33-133 is a narrow focus law under which the Board’s duty is to set policy for data security, not to subvert the Department in the control or management of computer systems.

9. This longstanding division of labor is also confirmed by the Board’s own IPAPA regulation on Data Collection as referenced in the Declaration of Russell A. Joki, paragraphs 44-50. A copy of IDAPA 08.02.03.115 is attached hereto as Exhibit “4”.

10. The Declaration of Matt Freeman, paragraph 19 offers that “The Transfer of 18 employees from one executive agency of the Board to another executive agency of the Board . . . should not interfere with the work of the SDE or the Superintendent.”

This statement confirms that the Executive Director of the Board recognizes neither the constitutional dimension of the elected Superintendent of Public Instruction nor the fact that the

Superintendent, not he, pursuant to Idaho Code Section 33-125 is the “executive officer of such department.”

Significantly, paragraph 21 of the Freeman Declaration also confirms that neither he nor the Board yet understand that the Technology (Services) Group of the Idaho Department of Education and Office of the Superintendent and their employees are a fully integrated and vital unit co-ordinating daily in all of the functions and duties related to Idaho’s public schools and pupils, as described in paragraph 3 above and Exhibits “A” through “D” to the Verified Petition. The offer that “The same data currently collected in ISEE will be available for use by the Superintendent” reveals that Mr. Freeman and the Board still proceed under the misperception that these employees only operate as part of the limited student data functions shown in the Daisy Diagram, Exhibit 2, hereto. The proposed transfer of these 18 employees is destructive, not centralizing for Idaho education.

11. In an effort to avoid the instant litigation, I caused to be drafted and presented to the Board of Education a Memorandum of Understanding on two occasions which proposed that we mutually utilize the appropriation contained in SB 1409 to fund the Technology (Services) Group employees and operations during the coming Fiscal Year, while allowing the Superintendent “to provide day to day direction and supervision of said Group to discharge her constitutional function and existing statutory duties.” It also proposed that “both the Board and the Superintendent will cooperate in approaching and presenting proposals and clarifying the issue before the 2021 Legislature.” A copy of that MOU is attached as Exhibit “5”. The Board declined.

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.



Sherri Ybarra

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

Wednesday, Feb. 19, 2020 at approximately 6:00 p.m.

Supt. Ybarra had a conversation with Rep. Toone at the Superintendent's network. The Supt. asked Rep. Toone if the rumors were true that JFAC was trying to move the IT department from the SDE to the Office of the State Board (OSBE). Rep. Toone confirmed the rumors were true but didn't want to talk about it at the reception as too many people were watching, including Rep. Wendy Horman, who was in attendance. Rep. Toone did say that the discussion in the education budget working group were contentious and "ugly." She told the Supt. that Sen. Crabtree and Rep. Horman were leading the push to move the Technology Services department, and that they know it was wrong. She suggested meeting the next day and said she would get in touch with Marilyn.

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

Supt. Ybarra and Marilyn Whitney 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 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 or around 11:00 a.m.

The Supt. called President Critchfield. She denied that she knew anything about JFAC's intent to move Technology Services. She did say that Matt Freeman, the Board's Executive Director had mentioned LSO was asking him questions about IT and he told them they needed to talk to the Supt. She reiterated that she had not have any conversations with Legislators about such a plan.

At approximately noon

Matt Freeman met with the Supt. and Mr. McPherson. He wanted to assure the Supt. that he had nothing to do with this proposal to move technology services from SDE to OSBE. He said, "this is all monkey business. I want nothing to do with this." He said this was something the legislature was doing. He also said, "why would I want to be involved in this? You are one of my bosses, and I wouldn't do that to you."

EXHIBIT "1"

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 and Paul Headlee 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.

Wednesday, February 26, 2020 at approximately 3:45

The Supt. and her Chief Deputy Peter McPherson met with Sen. Crabtree after the Senate Education Committee meeting. He told the Supt. no decisions had been made about the budget. He said they weren't sure what they were going to do yet. They would include the Supt. in the conversations and let her know. He was very friendly and didn't discuss or say anything about wanting to get rid of the Supt's office or that this was being considered. They had no conversation about the specifics of the technology services group. She asked him if he needed anything, and he said "no." He gave the impression that everything was fine.

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. that "this is about relationships."

Friday, February 28, 2020 at approximately 9:00 a.m.

The Supt. had a conversation via cell phone with Will Goodman, her former Chief Technology Officer and current IDLA director en route to Capital for a Day in Cascade. She asked him about the rumor she heard that he was sworn to secrecy about the Technology Services budget move. He confirmed he was sworn to secrecy during a conversation with Rep. Wendy Horman. He was fearful that if he talked to SDE or the Supt. Rep. Horman would retaliate by cutting funding to IDLA. He said that she called him into a meeting and wanted to know if the tech move would be damaging. He said he used words like catastrophic and the whole department would collapse. He recommended they not make such a move and, instead, have a conversation with SDE. She asked him how to separate out employees and FTP, and he said it would be difficult to do and she should talk to the SDE.

Tuesday, March 3, 2020 at 8:00 a.m.

This was budget setting for K-12 and the Supt.'s office as well as the Office of the State Board of Education. When the SOPI budget was being debated, Rep. Melissa Wintrow asked the Supt. if she had been aware of the move and what she thought. The Supt. said she was "shocked" that this was being considered. That no plan had been discussed with her on how this would be accomplished.

Wednesday, April 1, 2020, at approx. 9:12 a.m.

Pres. Critchfield texted the Supt. about the Technology Services group transfer. The Supt. responded that she had concerns about this move. A phone call ensued, and the Supt. indicated it would be very damaging and asked President Critchfield if the Board could just delegate the responsibility back to SDE.

Pres. Critchfield shared her fears that legislators would retaliate. She said the Sen. Crabtree told her "you're being watched. This better go right, and you better not delegate this back to the Supt." She indicated that Sen. Crabtree said the legislature would begin to strip the Supt. of her duties and authority. Next would be the assessment and accountability group and then teacher certification. He told her they were not happy with public education and want to see change.

The Supt. told Pres. Critchfield; there was no way to split the Technology Services duties out of the SDE. President Critchfield asked who she could talk to in the Dept. about the move. The Supt. asked what the plan was, and Pres. Critchfield said it was simple, "Chris would just start reporting to Matt Freeman on July 1."

The Supt. relayed her concerns about what such a move would do to schools during the coronavirus pandemic.

Pres. Critchfield asked what the Supt.'s plan was. The Supt. said she couldn't split out the employees. The Supt. said she would send a memo. Pres. Critchfield said she didn't want a public fight.

Thursday, April 2, 2020 at approximately 1:00.

The Supt. had a phone conversation with Treasurer Julie Ellsworth. She relayed that she had wanted to connect with the Supt. during the session after her staff overheard Sen. Crabtree and Rep. Horman "hatching a plan" to strip the Supt. of her Constitutional authority. They acknowledged that they knew putting a Constitutional amendment on the ballot to move the Superintendent of Public Instruction to an appointed position wouldn't be successful in an election year. They said they would instead do it via a work around. They would start by moving technology services and then move to assessment and accountability and would take something every year until the Supt.'s office no longer existed.

Friday, April 3, 2020 at 5:00

Supt. Ybarra sent a memo to President Critchfield.

Soon after the memo was sent, Pres. Critchfield texted the Supt. and asked "but don't you get 3 FTP?" The Supt. responded, "As my memo explains, I need all my employees. Let's talk next week."

Idaho System for Educational Excellence (ISEE)

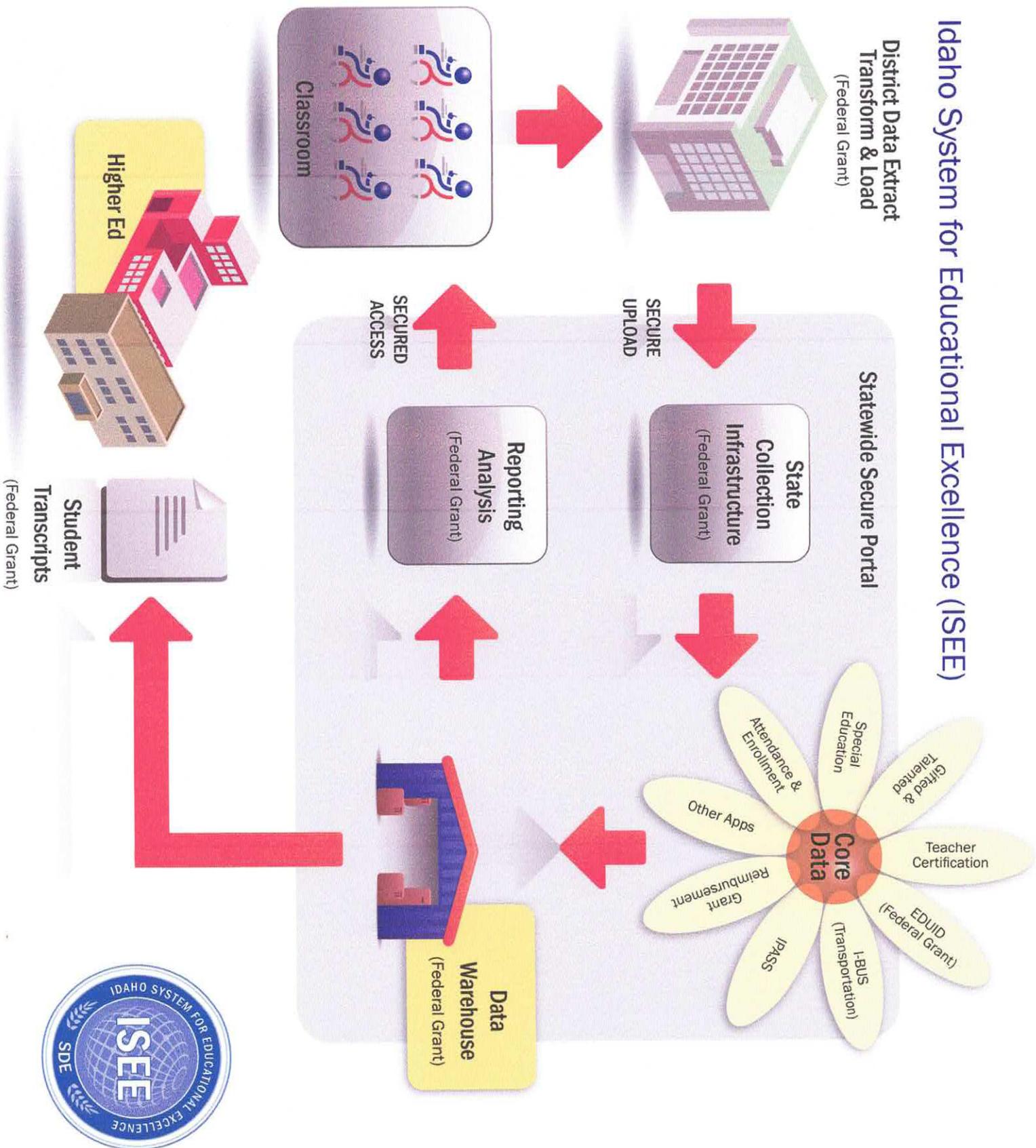


EXHIBIT "2"





STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

March 16, 2020

TRANSMITTED VIA EMAIL

The Honorable Lance W. Clow
Idaho House of Representatives
Idaho State Capitol
700 W. Jefferson Street, Room EG56
Boise, ID 83702
lclow@house.idaho.gov

RE: Request for legal advice; SB 1409, SB 1410, HB 625

Dear Representative Clow:

This letter briefly answers the questions you raised in our March 13, 2020 phone call, which asked: (1) What authority does Idaho Code section 33–125 grant to the State Department of Education (“SDE”) and the Superintendent of Public Instruction regarding control over student data; (2) is HB 625 consistent with State law; (3) is an appropriation that moves 18 FTP pertaining to IT and data from SDE to the State Board of Education contrary to State law; (4) does Idaho Code section 33–133 bear on the question of authority over student data.

“The Legislature may not prevent a constitutional officer from performing [her] constitutional duties.” *Williams v. State Legislature of State of Idaho*, 111 Idaho 156, 157, 722 P.2d 465, 466 (1986) (citing *Wright v. Callahan*, 61 Idaho 167, 178, 99 P.2d 961, 965 (1940)). The Superintendent is a constitutional officer, her office being specifically provided for in article IV, section 1 of the Idaho Constitution. However, the Constitution does not set forth express powers for the Superintendent. See *Williams v. State Legislature of State of Idaho*, 111 Idaho 156, 157, 722 P.2d 465, 466 (1986) (recognizing that Idaho Const. art IV, § 1 does not set forth express powers for the State Auditor).

I. What authority does Idaho Code section 33–125 grant to the State Department of Education and the Superintendent of Public Instruction regarding control over student data?

Idaho Code section 33–125 provides for the SDE as “an executive agency of the state board of education,” with the Superintendent as the executive officer. Under the statute, SDE is tasked with

“carrying out policies, procedures and duties authorized by law or established by the state board of education for all elementary and secondary school matters.” The statute makes clear that SDE is subordinate to the Board of Education, although it has statutory authority to carry out the Board’s policies, procedures, and duties regarding K-12 matters.

Idaho Code Section 33–125 provides general principles, but it does not specifically speak to the question of whether SDE has authority over student data. While the statute states that SDE has authority to act with regard to “all elementary and secondary school matters,” this is limited by two phrases in the statute. First, SDE’s authority is limited to “carrying out [the Board’s] policies, procedures and duties.” SDE cannot create its own policies or procedures that conflict with the Board’s, nor can it choose to disregard the Board’s policies and procedures. Second, SDE’s authority is limited to policies, procedures and duties “authorized by law or established by the state board of education.” The Board has the ability to circumscribe SDE’s authority in a way by prescribing policies and procedures.

The practical consequence of SDE’s limited authority is that the Board could theoretically prescribe policies and procedures under which it maintained full control over student data and managed the associated personnel, and under which SDE had access to that data for the purpose of carrying out its responsibilities. Therefore, it is not clear that just because Idaho Code section 33–125 describes SDE’s responsibility as touching all K-12 matters that SDE necessarily has statutory control over student data and the associated personnel.

II. Is HB 625 consistent with State law?

SDE is a statutory creation, and its authority is derived from statute. SDE is tasked with carrying out the policies, procedures, and duties that are both “established by the state board of education,” as well as those “authorized by law.” Idaho Code § 33–125.

HB 625 specifically creates a technology services unit within the SDE. It provides specific responsibilities to that unit with regard to student data. It further allows the Superintendent and the Board to assign the unit duties. So long as the Superintendent does not assign the unit duties that conflict with Article IX, Section 2 of the Idaho Constitution—providing that the Board has authority over the “general supervision of the state educational institutions and public school system”—then HB 625 appears to be consistent with Idaho law. Duties assigned to the unit would be duties “authorized by law” under Idaho Code section 33–125.

III. Is an appropriation that moves 18 FTP pertaining to IT and data from SDE to the State Board of Education contrary to State law?

This question is essentially a constitutional issue, as to whether this appropriation would prevent the Superintendent from performing her constitutional duties. However, the answer is not clear.

“The Legislature may not prevent a constitutional officer from performing [her] constitutional duties.”¹ The Superintendent is a constitutional officer, her office being specifically provided for in article IV, section 1 of the Idaho Constitution. However, the Constitution does not set forth express powers for the Superintendent.² To determine the authority of constitutional officers in such a situation, the Idaho Supreme Court would likely look to Territorial laws governing the duties of comparable officials to determine whether the constitutional officer has implied duties under the Idaho Constitution.³

In 1866, the Territorial laws provided for a Superintendent of Public Instruction who had specific duties performed “with the advice and subject to the supervision of the Territorial Board of Education,” including “[t]o exercise a general supervision over such schools as may be established by law,” and apportioning school funds in proportion to the number of students according to reports of County Superintendents, “and make a record thereof in the book of records to be kept by the Territorial Board of Education.”⁴

Later, in 1887, the Revised Statutes of Idaho Territory rewrote the law regarding the Territorial Superintendent of Public Instruction. This new law provided that the Superintendent would act “by and with the advice and consent of the Legislative Council,” and did not mention a Board of Education. The Superintendent would have the duty to report to the Governor yearly on the condition of public schools, including providing a report detailing “the number of school children in the Territory, the number attending public schools and the average attendance,” and an accounting of school funding. Further, the Superintendent was to present suggestions regarding constructing schools, management of schools, and raising funds.⁵

The Territorial laws do not speak to the management of student data as we know it today, because such a thing was not envisioned at the time. However, the laws do touch on similar subjects. In 1866, data on school attendance and the proportional funding was kept in the records of the Board of Education. The 1887 Revised Statutes are silent as to where such records were kept, but did provide that the Superintendent would act with the advice and consent of the Legislative Council rather than a Board of Education, and would report on some points of student data, such as attendance.

With regard to education, the Idaho Constitution appears to more closely mirror the older Territorial laws rather than the newer ones in force when the Constitution was ratified. Like the older Territorial laws, we now have a Board of Education as well as a Superintendent. Therefore, the question is uncertain: which version of the Territorial Superintendent would the Court look to for implied powers in our current constitutional Superintendent? The older but more familiar

¹ *Williams v. State Legislature of State of Idaho*, 111 Idaho 156, 157, 722 P.2d 465, 466 (1986) (citing *Wright v. Callahan*, 61 Idaho 167, 178, 99 P.2d 961, 965 (1940)).

² See *Williams v. State Legislature of State of Idaho*, 111 Idaho 156, 157, 722 P.2d 465, 466 (1986) (recognizing that Idaho Const. art IV, § 1 does not set forth express powers for the State Auditor).

³ See generally *Williams v. State Legislature of State of Idaho*, 111 Idaho 156, 156, 722 P.2d 465, 465 (1986).

⁴ Laws of the Territory of Idaho, Ch. VI, Title II, Art. II, § 1 (1866).

⁵ Revised Statutes of Idaho Territory, Title III, Ch. II, §§ 630–31 (1887).

version, or the version at the time the Idaho Constitution was ratified? Further, are the powers of either version of the Territorial Superintendent be comparable enough with authority over modern electronic student data to answer the question?

There are good arguments on both sides of the issue, and little guidance. Therefore, the question of whether an appropriation moving authority over K-12 student data from the Superintendent to the Board is unconstitutional has an unclear answer. HB 625 would easily resolve these concerns by making it clear in the law that K-12 student data is controlled by SDE for purposes of the SDE to provide reports on data pertaining to K-12.

IV. Does Idaho Code section 33–133 bear on the question of authority over student data?

Idaho Code section 33–133 primarily deals with privacy with regard to student data. It provides for FERPA compliance, protection with regard to public records requests, and aggregation of data that will be disclosed.

Subsection (3) states:

Unless otherwise provided for in this act, the executive office of the state board of education shall be the entity responsible for implementing the provisions of this act. All decisions relating to the collection and safeguarding of student data shall be the responsibility of the executive office of the state board of education.

This provision places the responsibility for data privacy on the Board. Although it states that the Board is responsible for “decisions relating to the collection and safeguarding of student data,” this statement is made in the context of the whole statute. The provision simply places ultimate authority for data security on the Board. It does not provide that SDE is precluded from having a technology services unit that administers a student data system. However, SDE’s technology services unit must comply with the data security requirements of the Board under Idaho Code section 33–133.

In summary, Idaho Code section 33–133 does not bear on the question of whether HB 625 can allow SDE to administer a student data system.

I hope you find this analysis helpful. Please contact me if you have any additional questions.

Sincerely,



LESLIE M. HAYES
DEPUTY ATTORNEY GENERAL

113. (RESERVED)

114. FAILURE TO MEET ANNUAL MEASURABLE PROGRESS.

01. Accountability Measures and Timelines. Accountability measures and timelines will be determined by the state board of education for school districts and schools who fail to meet annual measurable progress. (3-29-17)

02. Compliance with Federal Law. All schools and local educational agencies in this state shall comply with applicable federal laws governing specific federal grants. (4-6-05)

a. With respect to schools and local educational agencies in this state that receive federal grants under title I of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015 (Title I schools), the State Department of Education shall develop procedures for approval by the State Board of Education, consistent with federal law, that describe actions to be taken by local educational agencies and schools in this state in regard to schools that fail to meet interim and long-term progress goals. (3-29-17)

b. With respect to schools and local educational agencies in this state that do not receive federal grants under Title I of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015, such non-Title I schools and local educational agencies shall be required to comply with federal law and state requirements with the procedures relating to failure to meet interim and long-term progress goals as provided in Subsection 114.02.a. of this rule, as if they were Title I schools, except that any provisions relating to the use of federal grants to pay for such expenses shall not be applicable to such non-Title I schools and local educational agencies. In such event, non-title I schools shall be required to fund such compliance costs from general operating funds. (3-29-17)

03. State Department of Education. With respect to the implementation of duties and responsibilities described under Title I of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015, that are applicable to a state educational agency, the State Department of Education shall perform such duties and responsibilities delegated by the State Board of Education, including, but not limited to, making technical assistance available to local educational agencies that fail to meet interim and long-term goals, and for providing technical assistance, developing improvement plans, and providing for mandatory corrective actions to local educational agencies as required under federal law and state law. (3-29-17)

115. DATA COLLECTION.

The State Department of Education will collect the required information from participating school files for state and federal reporting and decision-making. The enrollment collection will contain information about the enrollment of the student attributes such as unique student identifier, active special education, Limited English Proficient (LEP), migrant, grade level, gender, race, and free/reduced lunch status. The collection will be done in accordance with the reporting requirements established in Chapter 10, Title 33, Idaho Code, or as needed for state and federal accountability purposes. Each participating school is required to verify and assure the accuracy of the data submitted in the files. (3-20-20)

01. State Data System. In accordance with the provisions of Section 33-133, Idaho Code, the following data elements will be added to the state data system: (3-28-18)

a. Grade Point Average (GPA); and (3-28-18)

b. Chronic Absenteeism. (3-20-20)

116. UNIQUE STUDENT IDENTIFIER.

01. Assignment. Effective April 1, 2009, each student enrolled or enrolling in an Idaho school district or LEA will be assigned a unique student identifier. The unique student identifier shall follow the student from each school district or LEA or upon return to a school district or LEA after an absence from a school district or LEA no matter how long of absence has occurred. (5-8-09)

MEMORANDUM OF UNDERSTANDING BETWEEN THE STATE BOARD OF EDUCATION AND THE IDAHO SUPERINTENDENT OF PUBLIC INSTRUCTION REGARDING THE OPERATION, MANAGEMENT AND FISCAL ASPECTS OF THE IDAHO SYSTEM FOR EDUCATIONAL EXCELLENCE AND THE TECHNOLOGY SERVICES GROUP FOR FY 2020-2021

WHEREAS, The Idaho Superintendent of Public Instruction, pursuant to the Idaho Constitution, Article IV, Section 1 and the inherent authority therefrom, is charged with the constitutional duty of providing for the education of Idaho's school children,

WHEREAS, in support of said constitutional duty and function, Idaho Code Section 33-125 has established a State Department of Education under the direction of the Superintendent, as executive officer thereof, with authority to address all elementary and secondary school matters,

WHEREAS, the Idaho State Board of Education, pursuant to the Idaho Constitution, Article IX, Section 2, is charged with the general supervision of education in Idaho, with the obligation to set policies, procedures and duties,

WHEREAS, both the Superintendent and the Board are committed to collaborating with each other to achieve the mutual mission of providing a superior educational experience for each of Idaho's school children,

WHEREAS, in furtherance of said mission, the Department has established the Idaho System for Educational Excellence which is a K-12 Longitudinal Data System which supports budgeting processes, data submissions and delivers information to educational stakeholders to create data driven decisions,

WHEREAS, said System is maintained, managed and utilized for statewide operations by the Technology Services Group, within the State Department of Education under the supervision of the Superintendent,

WHEREAS, said Group is currently composed of twenty one (21) salaried employees, organized and reporting as demonstrated in the chart attached hereto as Exhibit "A" and each performing the vital functions as described in the memorandum attached hereto as Exhibit "B",

WHEREAS, the 2020 Idaho Legislature enacted two appropriation bills which relate to and affect the operation of the Group and the System, in that Senate Bill 1410 terminated the funding for eighteen (18) employees in the Department's Technology Group, retaining only three (3) employees therein under the budget of the Superintendent and Senate Bill 1409 placed the funding

for said eighteen (18) employees within the budget of the Board, for Fiscal Year 2020-2021, commencing July 1, 2020, and raising operational, legal, fiscal and logistical issues for both of the parties,

WHEREAS, the Superintendent asserts that the loss and termination of the existing personnel and potential disruption of the System and her ability to supervise and direct the same and to utilize for all relevant purposes the work product of their effort, will impair her ability to fully discharge her constitutional duties, effective July 1, 2020,

WHEREAS, the current Executive Order Spending Rollback and Hiring Freeze declared by Governor Little by Executive Order 2020-05 on March 27, 2020 makes it problematic and impossible for the Board to hire eighteen (18) new employees by and after July 1, 2020,

WHEREAS, both the Board and the Superintendent, to the maximum extent possible, wish to foster and maintain positive and effective working relationships with the Idaho Legislature and to the extent lawful and practicable, discern and facilitate Legislative intent in the administration and implementation of both statutes and appropriations,

AND WHEREAS, both the Board and the Superintendent will co-operate in approaching and presenting proposals and clarifying this issue before the 2021 Legislature,

NOW THEREFORE, IT IS HEREBY AGREED AND UNDERSTOOD BETWEEN THE BOARD AND THE SUPERINTENDENT AS FOLLOWS:

1. The current personnel of the Technology Group shall be retained in their respective posts at their present location to operate the Idaho System for Educational Excellence.
2. It shall remain the duty of the Superintendent to provide day to day direction and supervision of said Group to discharge her constitutional function and existing statutory duties.
3. The Board may, as it deems appropriate, require additional reports or information from said Group in furtherance of its policies, procedures and duties. Further, the Group shall, from time to time, forward to the Board advance copies of statutorily required or major reports and summaries for review and consultation, prior to their issuance.
4. Consistent with Senate Bill 1410, the Superintendent shall designate and pay the salary and benefits of three (3) current Group employees.
5. Consistent with Senate Bill 1409, the Board shall pay the salary and benefits of the remaining eighteen (18) current Group employees, via transfer of funds to or billing for services from the Superintendent and the Department, or by other appropriate fiscal measures.
6. The parties shall co-operate in reaching such further understandings, executing such documents, including but not limited to any additional personnel forms, payment vouchers and

directives or establishing such policies as are necessary to implement the purpose and intent of this Memorandum of Understanding.

7. Any disputes or concerns arising hereunder shall first be mutually referred to the Office of the Idaho Attorney General for mediation.

8. The Board and the Superintendent will consult and collaborate, to the maximum extent possible, in presenting separate or joint proposals and clarifying the issue before the 2021 Legislature.

DATED this ____ day of April, 2020.

AGREED AND UNDERSTOOD:

For the Board of Education

By the Superintendent of Public Instruction