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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,

v.

THE LEGISLATURE OF THE STATE
OF IDAHO, BY REPRESENTATIVE
SCOTT BEDKE, in his official capacity as
SPEAKER OF THE HOUSE OF
REPRESENTATIVES, *et al.*,

Respondents.

Supreme Court Docket No. 47991-2020

**DECLARATION OF MATT
FREEMAN IN SUPPORT OF
IDAHO STATE BOARD OF
EDUCATION'S AND DEBBIE
CRITCHFIELD'S RESPONSE TO
THE VERIFIED PETITION FILED
APRIL 27, 2020**

I, Matt Freeman, having been duly sworn on oath, declare as follows:

1. I was appointed by the Idaho State Board of Education (“Board”) to serve as its Executive Director for the Office of the State Board of Education (“OSBE”) in June 2015. For the five and a half years prior to my appointment, I worked as the Chief Financial Officer for OSBE. As Executive Director, I have knowledge regarding the laws, rules and policies that apply to the OSBE and Board, as well as the Board’s relationship with the Superintendent of Public Instruction and the State Department of Education.

2. I am submitting this Declaration in support of the Board’s Response to the Superintendent’s *Verified Petition for a Declaration of Unconstitutionality and a Writ of Mandamus and/or Prohibition by Original Jurisdiction and Request for Expedited Hearing* (“Petition”) and the Superintendent’s *Memorandum in Support of Motion to Set an Expedited Briefing and Hearing Schedule* (“Memorandum”).

3. The 18 employees in the Technology Group, according to the Superintendent’s Petition and Memorandum, support the Idaho System for Educational Excellence (“ISEE”).

4. ISEE is one component of the three pronged statewide longitudinal data system. The data system allows for longitudinal tracking of student data through all levels of the public education system and into the workforce. The data is used to evaluate and improve public education, for accountability, and to inform lawmakers and others responsible for public education, as well as the public. The data is also used to assist the Board in its governance of the public school system and support the responsibilities of OSBE and the State Department of Education (“SDE”).

5. The K-12 data collected through ISEE is currently managed by the State Department of Education. The postsecondary data is managed by OSBE and is referred to as the

Postsecondary Measures of Academic Progress (“PMAP”). The Department of Labor collects and stores the labor data, which is referred to as the Idaho Labor Market Information (“ILMI”).

6. The Board is the state educational agency (“SEA”) for the state of Idaho under Idaho Code § 33-110 and is authorized to negotiate and contract with and accept financial assistance from the federal government. The statewide longitudinal data system, including ISEE, was funded by federal grants obtained by OSBE, on behalf of the Board, from the U.S. Department of Education’s National Center for Education Statistics, as well as some state funds.

7. The Board’s role in creating ISEE is reflected on the SDE’s website, which contains the following information: “The Idaho State Board of Education was the recipient of a Statewide Longitudinal Data System (SLDS) grant in May of 2009. The grant funds are dedicated to the development of a K-12 data system. It was developed and is currently being managed by the Idaho State Department of Education (SDE). The grant required creation of a longitudinal data warehouse, deployment of a Reporting and Analysis System and the collection of data from all Idaho public school districts and charter schools.”

<https://www.sde.idaho.gov/tech-services/isee/>

8. Paragraph 21 of the Superintendent’s Petition states that “the Superintendent and the Department have established the Idaho System for Educational Excellence.” This is incorrect. ISEE was created with grant funding obtained by OSBE and developed with SDE under the authority of the Board. Idaho Code § 33-120(2).

9. The legislature has affirmatively vested OSBE with the responsibility for “all decisions relating to the collection and safeguarding of student data.” Idaho Code § 33-133(2).

10. The Board has statutory authority under Idaho Code § 33-105 to govern the executive agencies and institutions under its governance through its adoption of rules. The rules

adopted are referred to as the Board's "general governing policies and procedures."

11. The Board, through Board Policy I.O., created a data management council to make recommendations to it regarding the oversight and development of the statewide longitudinal data system, and to oversee the creation, maintenance and use of the system. The data management council consists of representatives from SDE, OSBE, the Department of Labor, the higher education institutions, school districts, and others.

12. Board Policy I.O. requires that the OSBE representative chair the Data Management Council.

13. Here is the link to Board Policy I.O:

https://boardofed.idaho.gov/wp-content/uploads/2016/12/io_data_management_council_0415.pdf

14. Attached as Exhibit A is a letter dated April 3, 2020 from the Superintendent to Board President Debbie Critchfield.

15. Attached as Exhibit B is a memorandum of understanding proposed by the Superintendent which the Board declined to execute at Board meetings on April 20 and 22, 2020.

16. Attached as Exhibit C is a letter dated April 9, 2020 from Board President Debbie Critchfield to the Superintendent explaining why the Board needed to comply with the intent of the appropriations bills in question.

17. In the Superintendent's correspondence of April 3, 2020, her proposed memorandum and Petition, the Superintendent claims that moving the 18 Technology Group staff members to the OSBE will cause severe disruption for the SDE and for her.

18. I have attempted to work in good faith to ensure the transition is as smooth and seamless as possible, and to minimize any disruption to SDE. The 18 Technology Group

employees can continue to perform the same jobs and functions as they have performed at SDE, as identified in the attachments to the Petition.

19. Transfer of the 18 employees from one executive agency of the Board to another executive agency of the Board to continue work on the student data management system over which the Board has statutory responsibility to implement and for which the OSBE obtained grant funding to create, should not interfere with the work of the SDE or the Superintendent.

20. The transition should not require the employees or their equipment to be relocated. OSBE is located on the third floor of the LBJ building. The SDE and Superintendent are located on the second floor of the LBJ building. The Technology Group is located in the basement of the LBJ building. The 18 employees could continue to use the same office space, equipment and furniture as they used while supervised at the SDE.

21. The same data currently collected in ISEE will continue to be collected in ISEE and will be available for use by the Superintendent, SDE, OSBE and other stakeholders, including public school districts and charter schools, for the same purposes as it is currently used. Access to the data will follow a similar or perhaps more streamlined protocol as is now used by OSBE and other stakeholders who currently access ISEE data.

22. OSBE has confirmed that the transition will not impact the employees' leave, retirement or health care benefits.

23. Employees of OSBE and SDE have a long history of working collaboratively on a number of areas related to K-12 education, for the benefit of public school students, including: to present materials and provide policy analysis and recommendations to the Board for action at Board meetings; on the Data Management Council; on initiatives from the Governor; on STEM Education policy and initiatives; on assessment and accountability; on early literacy and literacy

intervention initiatives; on Advanced Opportunities programs and college and career advising; and on Idaho's educator pipeline. In addition, currently, the SDE uploads the state's Consolidated State Performance Report (data demonstrating all of the federal requirements for Idaho are met to receive federal funding), and OSBE certifies the data on behalf of the Board as the SEA. There is no reason to assume that work related to ISEE would be any less collaborative.

24. The Superintendent alleges that "the Board has insisted on obtaining and exercising sole 'direct oversight of the technology services staff and operations,' by its Executive Director and proposes commencing an immediate transition of said Technology Group employees and operations even prior to July 1, 2020." ¶ 34, Petition at 14. I have discussed with the Superintendent the need to commence transition planning immediately in order to effectuate a smooth transition on July 1, 2020. I have not, however, proposed an actual transition of the 18 positions prior to July 1, 2020. Such a transfer prior to July 1st is not appropriate as it lacks legislative and budget authority since enactment of S1409 and related funding is not effective until July 1, 2020.

25. The Board's sole interest in this matter is to implement the letter and spirit of the law, and to do so "in a timely and seamless manner to ensure continuity of operations and services to the Board, State Department and school districts." Attachment C (Critchfield, April 9th letter). The appropriation bills (S1409 and S1410) make clear that the legislature was interested in centralizing IT and data management at OSBE.

26. In Section III of the Superintendent's Memorandum, the Superintendent alleges that the Board is compelling the Superintendent report "to a staff member under the part-time, appointed, policy making, general supervisory Board to direct her own departmental functions."

Memorandum at 5. Neither the Board nor I have ever suggested the Superintendent would report to me. The Superintendent, as a member of the Board, is my employer pursuant to Idaho Code § 33-102A.

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

DATED this 15th day of May 2020.



MATT FREEMAN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 15, 2020, I filed the foregoing electronically through the iCourt E-File system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notification of Service:

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/s/ Chris Kronberg
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EXHIBIT A

to the Declaration of Matt Freeman

