



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

VIA E-MAIL

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April 11, 2017

The Honorable Wendy Horman
Idaho State Representative
1860 Heather Circle
Idaho Falls, ID 83406

Re: School Funding Formula – Our File No. 17-57401

Dear Representative Horman:

This letter is in response to your inquiry of this office regarding the school funding formula. Specifically, you asked: “Are There Legal Obstacles That Would Apply to Amending the School Funding Formulas Found in the Foundation Program — State Aid — Apportionment, Title 33, Chapter 10, Idaho Code?” As explained in greater detail below, the legislature has broad authority within this area, but every change to the funding formula must take into account the effects upon each school district and public charter school (in effect, the most vulnerable school district and/or public charter school) for facilities, instructional programs and textbook, and transportation plus any additional requirements of § 33-1612. Any changes must insure that the constitutional standards for thoroughness and uniformity of curriculum are maintained system wide.

1. The Legislature Has Broad Authority to Establish A Constitutionally Compliant System of Schools.

Under the Idaho case law, there are no “formulaic” legal obstacles to amending the funding provisions found in this chapter of the Idaho Code. For example, Idaho Code § 33-1002 contains formulas for converting Average Daily Attendance figures into Kindergarten, Elementary, Secondary, Exceptional Education, and Alternative Secondary Support Units. These quantitative provisions for school funding can be adjusted as the Legislative sees fit subject to the qualitative requirement contained in art. IX, sec. 1, that the “legislature of

Idaho ... establish and maintain a general, uniform and thorough system of public, free common schools.”

The most complete discussion of the requirements of a thorough system of public, free common schools comes from the Supreme Court of Idaho’s decision in *Idaho Schools for Equal Educational Opportunity v. Evans*, 123 Idaho 573, 850 P.2d 724 (1993) (*ISSEO I*). After explaining that the “uniformity” provision of art. IX, sec. 1, “requires only uniformity in curriculum, not uniformity in funding,” 123 Idaho at 579-580, 850 P.2d at 730-731, the Idaho Supreme Court identified three areas in which the Legislature must provide for a “thorough” education — (a) school facilities, (b) instructional programs and textbook, and (c) transportation:

Balancing our constitutional duty to define the meaning of the thoroughness requirement of art. 9 § 1 with the political difficulties of that task has been made simpler for this Court because the executive branch of the government has already promulgated educational standards pursuant to the legislature’s directive in I.C. § 33-118. See State Board of Education Rules and Regulations for Public School K-12, IDAPA 08.02. We have examined those standards carefully and now hold that, under art. 9, § 1, the requirements for [a] school facilities, [b] instructional programs and textbooks, and [c] transportation systems as contained in those regulations presently in effect, are consistent with our view of thoroughness. We believe that our acknowledgement of these standards appropriately involves the other branches of state government while allowing the judiciary to hold fast to its independent duty of interpreting the constitution when and as required.*

127 Idaho 583-584, 850 P.2d at 734-735.

2. The Legislature Has Defined Thoroughness To Include Facility Requirements along with Curricular Requirements.

Following the Court’s decision in *ISEEO I*, the Legislature enacted a statutory definition of thoroughness and sunsetted the State Board of Education Rules cited in *ISEEO I*. The statutory definition of thoroughness is in Idaho Code § 33-1612 and includes definitions that implicate (a) school facilities and (b) instructional programs and textbooks:

§ 33-1612. Thorough system of public schools. — The constitution of the state of Idaho, section 1, article IX, charges the legislature with the duty to establish and maintain a general, uniform and thorough system of public, free common schools. In fulfillment of this duty, the people of the state of

*Our holding of the consistency of the IDAPA standards, with a definition of thoroughness is limited to the standards as they exist today. We express no opinion as to whether the IDAPA standards would be consistent with that definition if the Board of Education were to amend them.

Idaho have long enjoyed the benefits of a public school system, supported by the legislature, which has recognized the value of education to the children of this state.

In continuing recognition of the fundamental duty established by the constitution, the legislature finds it in the public interest to define thoroughness and thereby establish the basic assumptions which govern provision of a thorough system of public schools.

A thorough system of public schools in Idaho is one in which:

1. [a] A safe environment conducive to learning is provided;
2. Educators are empowered to maintain classroom discipline;
3. [b] The basic values of honesty, self-discipline, unselfishness, respect for authority and the central importance of work are emphasized;
4. [b] The skills necessary to communicate effectively are taught;
5. [b] A basic curriculum necessary to enable students to enter academic or professional-technical postsecondary educational programs is provided;
6. [b] The skills necessary for students to enter the work force are taught;
7. [b] The students are introduced to current technology; and
8. [b] The importance of students acquiring the skills to enable them to be responsible citizens of their homes, schools and communities is emphasized.

The state board shall adopt rules ... to establish a thorough system of public schools with uniformity as required by the constitution, but shall not otherwise impinge upon the authority of the board of trustees of the school districts. [Provisions regarding roles of school districts, trustees, state board, patrons, and the legislature omitted.]

The items marked with an [a] or a [b] implicate either (a) school facilities or (b) instructional programs and textbooks (it is probably a fair reading of § 33-1612 that the term “textbooks” as used in *ISSEOI* has been broadened by statute to include current technology like computers). The omission of transportation from the statutory definition of thoroughness does not mean that school funding need not address transportation; *ISSEOI* continues to require transportation funding even if § 33-1612 does not.

3. Although Broad, The Legislature’s Authority Must Adhere To the Constitutional Requirements.

In short, the constitutional and statutory restrictions on funding do not require a

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specific formula for funding, but the assurance that whatever funding is available meets these constitutional and statutory requirements for thoroughness (as well as the statutory requirement for uniformity of curriculum) *for every school district and public charter school* (charter schools did not exist when *ISEEO I* was decided or when § 33-1612 was enacted, but the constitutional requirements will also apply to them). That means that every change to the funding formula must take into account the effects upon each school district and public charter school (in effect, the most vulnerable school district and/or public charter school) for facilities, instructional programs and textbook, and transportation plus any additional requirements of § 33-1612.

I hope you find this letter helpful.

Sincerely,



BRIAN KANE

Assistant Chief Deputy

BK/tjn