

TITLE 6
ACTIONS IN PARTICULAR CASES

CHAPTER 22
CONSTITUTIONALLY BASED EDUCATIONAL CLAIMS ACT

6-2201. SHORT TITLE. This chapter shall be known and may be cited as the "Constitutionally Based Educational Claims Act."
[6-2201, added 1996, ch. 258, sec. 1, p. 845.]

6-2202. PURPOSE OF CHAPTER -- DEFINITION OF CONSTITUTIONALLY BASED EDUCATIONAL CLAIM. Section 1, article IX, of the constitution of the state of Idaho provides: "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." The purpose of this chapter is to provide a mechanism for adjudicating the performance of that duty when there are allegations that public schools do not provide educational services that they are required to provide as part of a general, uniform and thorough system of public, free common schools. In this chapter, a constitutionally based educational claim is defined as a claim that public schools are not providing educational services that they are required to provide under section 1, article IX, of the constitution of the state of Idaho, and constitutionally required educational services are defined as the educational services that must be provided under section 1, article IX, of the constitution of the state of Idaho. In particular, this chapter provides procedures for adjudicating constitutionally based educational claims and administrative and judicial remedies to be implemented when public schools in a specific local school district are not providing constitutionally required educational services as part of a general, uniform and thorough system of public, free common schools that has been established by the legislature. It is the policy of this chapter whenever possible that constitutionally based educational claims shall be settled locally through consent agreements or plans proposed by local school districts and that state intervention in local school districts be a last resort.

[6-2202, added 1996, ch. 258, sec. 1, p. 845.]

6-2203. SYSTEM ESTABLISHED UNDER SECTION 1, ARTICLE IX. The legislature hereby declares that the statutes allowing the creation of or chartering local school districts and giving them authority to raise and spend moneys and to provide educational services are designed to establish and maintain a general, uniform and thorough system of public, free common schools. The legislature hereby declares that the public schools operated by and the educational services provided by local school districts, together with any public schools operated by the state, constitute the system of public, free common schools described in section 1, article IX of the constitution of the state of Idaho.

[6-2203, added 1996, ch. 258, sec. 1, p. 846.]

6-2204. RESPONSIBILITY FOR PROVIDING EDUCATIONAL SERVICES REQUIRED BY THE CONSTITUTION. The legislature has established a system of public, free common schools by its authorization of the creation of or chartering of local school districts. Local school districts are hereby declared to have

the primary responsibility for provision of constitutionally required educational services and for assuring themselves and the public that the local school districts are operating their schools as part of a general, uniform and thorough system of public, free common schools. When a local school district is unable to meet its responsibilities under this chapter because it does not provide constitutionally required educational services, this chapter provides judicial and administrative remedies to bring schools operated by the local school district into compliance with section 1, article IX, of the constitution of the state of Idaho and first prescribes local solutions where possible.

[6-2204, added 1996, ch. 258, sec. 1, p. 846.]

6-2205. RIGHT OF ACTION -- STANDING TO SUE. (1) Patron suits against local school districts. 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 has standing to sue and may 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. These complaints may be known as patron complaints, and the persons who are plaintiffs may be known as patrons. The patron complaint must list with specificity the manner in which the patrons contend that the local school district is not providing constitutionally required educational services. No other person, except the state as *parens patriae*, has standing to bring suit against a school district on the ground that the school district is not providing constitutionally required educational services.

(2) *Parens patriae* suit against districts. The state of Idaho, through the legislature or through the superintendent of public instruction, may bring suit against a school district on the ground that the school district is not providing constitutionally required educational services.

(3) Patron suits against the state. No person other than a patron authorized to bring suit against a school district under subsection (1) of this section has standing to bring suit against the state, the legislature, or any of the state's officers or agencies on the ground that the state has not established and maintained a general, uniform and thorough system of public, free common schools. No patron with standing to bring suit against a school district may bring suit against the state, the legislature, or any of the state's officers or agencies on the ground that the state has not established and maintained a general, uniform and thorough system of public, free common schools unless the patron has first brought suit against its local school district pursuant to subsection (1) of this section and the district court has later authorized the patron to add the state as a defendant as authorized by this section. Any patron suit against the state, the legislature, or any of the state's officers or agencies not authorized by the district court pursuant to this section shall be dismissed.

(4) No other suits recognized. School districts are agents of the state for purposes of providing a general, uniform and thorough system of public, free common schools, and they have no standing to bring suit against the state for failure to establish and maintain a general, uniform and thorough system of public, free common schools. Any suit brought by a school district against the state, the legislature, or any of the state's officers or agents contending that the state has not established a general, uniform and thorough system of public, free common schools shall be dismissed. There shall

be no right of action by any person contending that there is not a general, thorough and uniform system of free common schools in this state except those authorized in subsections (1), (2) and (3) of this section naming with specificity the local school districts in which the plaintiffs live and with specificity the manner in which they contend that the public schools in that district are not providing constitutionally required educational services. Any other suit contending that there is not a general, thorough and uniform system of free, common schools shall be dismissed.

[6-2205, added 1996, ch. 258, sec. 1, p. 846.]

6-2206. PATRON COMPLAINTS TO BE FORWARDED TO ATTORNEY GENERAL. When a patron complaint is filed against a school district pursuant to this chapter, a copy of the complaint shall also be served on the attorney general, who shall notify the legislature and the superintendent of public instruction that the complaint has been filed. Either the legislature or the superintendent of public instruction may intervene as plaintiffs in the patron suit as a matter of right. No action shall be taken in the patron suit, except for the school district's filing of an answer to the patron complaint, until a copy of the complaint has been forwarded to the attorney general and the legislature and the superintendent of public instruction have been given thirty-five (35) calendar days to decide whether to intervene as a matter of right as plaintiffs in the patron suit.

[6-2206, added 1996, ch. 258, sec. 1, p. 847.]

6-2207. BENCH TRIAL. When a complaint is filed against a school district pursuant to this chapter, trial shall be before the district court sitting without a jury.

[6-2207, added 1996, ch. 258, sec. 1, p. 848.]

6-2208. DISTRICT COURT FINDINGS. Upon reaching the merits of the constitutionally based educational claim, the district court shall find whether the defendant local school district is providing all constitutionally required educational services. If the district court shall find that the defendant local school district is providing all constitutionally required educational services, it shall issue a declaratory judgment to that effect. If the district court shall find that the defendant local school district is not providing all constitutionally required educational services, the district court shall then conduct further proceedings as necessary to allow it to make the following findings:

(1) The local school district (a) does or does not offer educational or other services that are not constitutionally required, and (b) does or does not offer the constitutionally required educational services that it does offer in a manner that consumes more of the local school district's resources than necessary to offer the constitutionally required educational services that it does offer.

(2) If the local school district (a) offers educational or other services that are not constitutionally required, or (b) offers some of the services that are constitutionally required in a manner that consumes more of the local school district's resources than necessary to provide the constitutionally required educational services that it does offer, there is or is not a manner that resources devoted to offering services not constitutionally required or that consume more resources than necessary may be redirected to offer services that are constitutionally required but are

not being offered. In making this finding, the district court shall take into account any federal mandates with which the local school district must comply, and the local school district shall not be obligated to redirect its resources from complying with federal mandates.

(3) The local school district (a) does or does not impose maintenance and operations tax levies, supplemental maintenance and operations tax levies, and school emergency fund levies up to the statutory maximum allowed by law without holding further elections, and (b) does or does not impose maintenance and operations tax levies, supplemental maintenance and operations tax levies, and school emergency fund levies in a total amount that equals or exceeds the sum of the maximum statutory maintenance and operations levy and maximum statutory emergency fund levy plus the simple average of all supplemental maintenance and operations levies of all the local school districts in the state. In making this calculation, the district court may take official notice of publications of the superintendent of public instruction or may by order direct the superintendent of public instruction to supply calculations for the district court's use.

[6-2208, added 1996, ch. 258, sec. 1, p. 848.]

6-2209. REMEDIES IN SUIT AGAINST DISTRICT -- CONTINUING JURISDICTION. (1) If the district court finds that the local school district offers educational or other services not federally mandated and not constitutionally required, or offers some of the services that are constitutionally required in a manner that consumes more of the local school district's resources than necessary to provide the constitutionally required services that it does offer, it shall issue an order choosing from among the following remedies and retaining jurisdiction as required by this chapter. Any order accepting or modifying a consent agreement under subsection (2) of this section, accepting or modifying a plan under subsection (3) of this section, or directing school district action under subsection (4) of this section, shall be a final order for purposes of rehearing and appeal, but the filing of an appeal shall not itself stay the effect of the order, and the district court shall have continuing jurisdiction over compliance with the order or stay of the order unless stayed from continuing jurisdiction by the supreme court. The supreme court may stay the order or stay the district court's continuing jurisdiction over compliance with the order on such grounds as it finds appropriate.

(2) The parties shall be given a reasonable time not to exceed thirty-five (35) calendar days to attempt to enter into a consent agreement for meeting the local school district's obligations to provide constitutionally required educational services. If the parties cannot agree on a consent agreement within thirty-five (35) calendar days, the district court shall issue an order under subsection (3) or (4) of this section. If the parties submit a consent agreement, the district court shall independently review the consent agreement and may modify the consent agreement as it finds necessary in light of the local school district's obligations to provide constitutionally required educational services. Following review, the district court shall enter an order accepting, modifying or rejecting the consent agreement and retaining jurisdiction over the case. If the district court rejects the consent agreement, it shall issue an order under subsection (3) or (4) of this section. An order accepting or modifying the consent agreement may require the local school district to impose maintenance and operations levies, supplemental maintenance and operations levies

and emergency fund levies in the maximum amount allowed by law without an election and to impose an educational necessity levy as authorized in this chapter and defined in section 6-2214, Idaho Code.

(3) The local school district shall be given a reasonable time not to exceed thirty-five (35) calendar days to submit a plan for meeting its obligations to provide constitutionally required educational services. If the local school district does not submit a plan within thirty-five (35) calendar days, the district court shall issue an order under subsection (2) or (4) of this section. If the local school district submits a plan, the district court shall independently review the plan and any of the parties' comments to the plan and may modify the plan as it finds necessary in light of the local school district's obligations to provide constitutionally required educational services. Following review, the district court shall enter an order accepting, modifying or rejecting the plan and retaining jurisdiction over the case. If the district court rejects the plan, it shall issue an order under subsection (2) or (4) of this section.

(4) The district court may issue any of the following orders:

(a) If the local school district offers educational or other services not federally mandated and not constitutionally required, the district court may enjoin the local school district from offering some or all of those services not federally mandated and not constitutionally required.

(b) If the local school district offers some of the services that are constitutionally required in a manner that consumes more of the local school district's resources than necessary to provide the constitutionally required services that it does offer, the district court may enjoin the local school district from offering some or all of the constitutionally required services in a manner that consumes more of the local district's resources than necessary.

(c) If the local school district does not impose a maintenance and operations levy, a supplemental maintenance and operations levy, and an emergency fund levy in the maximum amounts allowed by law without an election, or if the sum of the local school district's maintenance and operations levy, supplemental maintenance and operations levy, and emergency fund levy does not equal or exceed the maximum maintenance and operations levy and emergency fund levy that may be imposed by law plus the simple average supplemental maintenance and operations levy of all the school districts in the state, pursuant to section 6-2210, Idaho Code, the district court may order the local school district to impose maintenance and operations levies, supplemental maintenance and operations levies, and emergency fund levies in the maximum amount allowed by law without an election and to impose an educational necessity levy as authorized by this chapter.

(d) If the district court finds that any other order or mandate would assist the local school district in providing constitutionally required educational services, the district court may issue any order that it determines would assist the local school district in providing constitutionally required educational services.

[6-2209, added 1996, ch. 258, sec. 1, p. 848.]

6-2210. FURTHER INQUIRY ABOUT TAX LEVIES -- ORDERS. (1) If the district court finds:

(a) That the local school district cannot offer federally mandated services and constitutionally required educational services because it does not have sufficient revenues; or

(b) That if the local school district were to offer the constitutionally required educational services that it does offer in a manner that consumes no more of the local school district's resources than necessary, it would still be unable to offer federally mandated services and constitutionally required educational services because it does not have sufficient revenues;

then the district court shall then find the sum of the maintenance and operations levies, supplemental maintenance and operations levies, and emergency fund levies imposed by the local school district and compare the sum to the sum of maintenance and operations levies and emergency fund levies in the maximum amount allowed by law plus the simple average of the supplemental maintenance and operations levies imposed by all school districts in the state.

(2) Orders following further inquiry about tax levies.

(a) If the district court finds:

(i) That the local school district cannot offer federally mandated educational services and constitutionally required educational services because it does not have sufficient revenues;

(ii) That if the local school district were to offer the constitutionally required educational services in a manner that consumes no more of the local school district's resources than necessary, it would still be unable to offer federally mandated educational services and constitutionally required educational services because it does not have sufficient revenues; and

(iii) That the sum of the local school district's levies totaled in subsection (1) of this section equals or exceeds the comparison made in subsection (1) of this section;

the district court shall issue an order authorizing the plaintiffs to add the state and/or the legislature as defendants.

(b) If the district court finds:

(i) That the local school district cannot offer federally mandated educational services and constitutionally required educational services because it does not have sufficient revenues;

(ii) That if the local school district were to offer the constitutionally required educational services in a manner that consumes no more of the local school district's resources than necessary, it would still be unable to offer federally mandated educational services and constitutionally required educational services because it does not have sufficient revenues; and

(iii) The sum of the local school district's levies totaled in subsection (1) of this section do not equal or exceed the comparison made in subsection (1) of this section;

notwithstanding any other provision of law to the contrary, the district court shall issue an order directing the local school board to impose maintenance and operations levies and emergency fund levies in the maximum amount that may be imposed by law. Furthermore, if the sum of the maximum maintenance and operations levy and emergency fund levy that may be imposed by law plus the supplemental maintenance and operations levy does not exceed the comparison made in subsection (1) of this section, the district court shall order the local school board to adopt an educational necessity levy

in an amount so that the sum of the maintenance and operations levy, the supplemental maintenance and operations levy, the emergency fund levy, and the educational necessity levy equals the comparison set forth in subsection (1) of this section. The district court shall issue an order directing that all tax revenues from the additional amounts levied pursuant to this subsection be directed first to meeting the local school district's obligations to provide constitutionally required educational services, but may allow the local school district to reduce any of the levies that it was ordered to raise upon the local school district's proof that it is then providing constitutionally required educational services. The district court shall have continuing jurisdiction to see that the additional tax revenues are spent according to its order.

[6-2210, added 1996, ch. 258, sec. 1, p. 850.]

6-2211. DISTRICT COURT'S CONTINUING JURISDICTION. When the district court has issued an order over which it has continuing jurisdiction under this chapter, the district court may review as necessary, but not less than annually, the question whether the local school district has complied with its obligation to offer constitutionally required educational services. Upon its review, the district court shall take the following actions:

(1) If the district court finds that the local school district has at that time complied with its obligation to provide constitutionally required educational services, it shall issue a declaratory judgment to that effect, and it may dissolve any orders previously in place as it finds appropriate.

(2) If the district court finds that the local school district has not yet complied with its obligations to provide constitutionally required educational services, but is making good faith progress toward compliance with its obligations to provide constitutionally required educational services, it shall issue an interlocutory finding to that effect and continue its jurisdiction.

(3) If the district court finds that:

(a) The local school district has not yet complied with its obligations to provide constitutionally required educational services;

(b) The local school district does not offer educational or other services not federally mandated or constitutionally required;

(c) The local school district does not offer constitutionally required educational services in a manner that consumes more of the local school district's resources than necessary to provide the constitutionally required educational services that it does offer;

(d) The sum of the local school district's maintenance and operations levy, supplemental maintenance and operations levy, emergency fund levy, and educational necessity levy equals or exceeds the comparison made in section 6-2210(1), Idaho Code; and

(e) The local school district does not have the resources to meet its obligation to provide constitutionally required educational services; the district court shall issue an order authorizing the plaintiffs to add the state and/or the legislature as defendants.

(4) If the district court finds that the local school district has not yet complied with its obligations to provide constitutionally required educational services and is not making good faith efforts toward substantial compliance, it shall continue its jurisdiction and may issue such orders as it finds necessary to compel good faith efforts on the local school district's part, including an order for state supervision.

[6-2211, added 1996, ch. 258, sec. 1, p. 852.]

6-2212. STATE SUPERVISION. When authorized by law, the district court, or the state board of education pursuant to section 33-909, Idaho Code, may issue an order for state supervision of a local school district. When an order for state supervision of a local school district is entered by the district court, the superintendent of public instruction shall within thirty-five (35) calendar days appoint, at local school district expense, an officer to be known as a district supervisor. When an order for state supervision of a local school district is entered by the state board of education, the district supervisor shall be appointed pursuant to section 33-909, Idaho Code, at local school district expense. The district supervisor shall have authority to approve or disapprove any actions of the board of the local school district, to supervise or dismiss superintendents, assistant superintendents, and any other district administrative personnel, and to take any actions necessary to further the local school district's obligations to provide constitutionally required educational services. In the case of appointment by the superintendent of public instruction, the district supervisor shall serve at the pleasure of the superintendent of public instruction until removed by the superintendent of public instruction or the superintendent of public instruction reports to the district court that the local school district is in substantial compliance with its obligations to provide constitutionally required educational services, or until the district court, upon its own motion or upon motion of any of the parties, orders state supervision to end. In the case of appointment by the state board of education, the district supervisor shall serve pursuant to section 33-909, Idaho Code.

[6-2212, added 1996, ch. 258, sec. 1, p. 852; am. 2006, ch. 311, sec. 2, p. 958.]

6-2213. SUIT AGAINST STATE. When the district court has authorized the plaintiffs to add the state or the legislature as defendants in a suit brought under this chapter, if the legislature is not already party to the suit, the legislature may move to reopen the proceedings to present evidence with regard to the district court's findings that preceded the district court's authorization to sue the state and/or the legislature, or it may stand on the record and findings before the district court. Following any additional evidence that may be offered after the state and/or the legislature is added as a defendant, if the district court finds that:

(1) The local school district has not yet complied with its obligations to provide constitutionally required educational services;

(2) The local school district does not offer educational or other services not federally mandated or constitutionally required;

(3) The local school district does not offer the constitutionally required educational services that it does offer in a manner that consumes more of the local school district's resources than necessary to provide the constitutionally required educational services that it does offer;

(4) The sum of the local school district's maintenance and operations levy, supplemental maintenance and operations levy, emergency fund levy, and educational necessity levy equal or exceed the comparison made in section 6-2210(1), Idaho Code; and

(5) The local school district does not have the resources to meet its obligation to provide constitutionally required educational services;

the district court shall enter a declaratory judgment finding that the system of public, free common schools established by law is unconstitutional as applied to the patrons of that local school district. If the district court cannot make all of these five (5) findings, it shall dismiss the complaint against the state and/or the legislature, but retain jurisdiction over the other defendants as necessary. The district court shall not issue any other final judgments or orders against the state and/or the legislature except as authorized by this section.

[6-2213, added 1996, ch. 258, sec. 1, p. 853.]

6-2214. EDUCATIONAL NECESSITY LEVY. (1) In general. There is hereby created an educational necessity levy that may be levied by a local school district as authorized in this chapter. The educational necessity levy shall expire upon order of the district court having jurisdiction over a suit brought under this chapter or five (5) years after it comes into existence, whichever comes first. An educational necessity levy authorized by this chapter may be imposed under the terms of this chapter, notwithstanding the provisions of section 63-802, Idaho Code.

(2) For safety and health. Notwithstanding any other provisions of this chapter, the district court may impose an educational necessity levy for the purpose of raising revenues to abate unsafe or unhealthy conditions that have been identified by findings of fact or a judgment of the district court, by a consent agreement that has been accepted (with or without modification) by the district court, or by a local school district plan to abate unsafe or unhealthy conditions that has been accepted (with or without modification) by the district court. The district court shall approve an educational necessity levy if it finds that the school district has no alternative source of revenue to use to abate unsafe or unhealthy conditions that have been identified by findings of fact or judgment of the district court, by a consent agreement that has been accepted (with or without modification) by the district court or by a local school district plan to abate unsafe or unhealthy conditions that has been accepted (with or without modification) by the district court. The limitations of sections 6-2209 and 6-2210, Idaho Code, regarding the calculation of and the maximum amount of the educational necessity levy do not apply to an educational necessity levy imposed to abate unsafe or unhealthy conditions that have been identified by findings of fact or a judgment of the district court, by a consent agreement that has been accepted (with or without modification) by the district court, or by a local school district plan to abate unsafe or unhealthy conditions that has been accepted (with or without modification) by the district court.

[6-2214, added 1996, ch. 258, sec. 1, p. 853; am. 2003, ch. 339, sec. 2, p. 914.]

6-2215. EFFECT ON PENDING LAWSUITS. (1) Chapter to apply to pending lawsuits. This chapter shall apply to any lawsuit pending on its effective date that has not proceeded to final judgment in the district court on the effective date of this amendment to this section if the lawsuit presents constitutionally based educational claims or counterclaims by any patrons or by the state of Idaho or state officers and shall apply to any lawsuit bringing a constitutionally based educational claim filed after its effective date.

(2) Procedure for pending lawsuits. If this chapter applies to a lawsuit pending on the effective date of this amendment to this section, all proceedings in the lawsuit shall be suspended for fifty-six (56) days

from the effective date of this amendment to this section, except to notify the district court of the passage of this amendment and to allow refiling of complaints consistent with this subsection. Any patrons who are parties to such a lawsuit shall have the fifty-six (56) days of the suspension period to file *parens patriae* complaint(s) consistent with the requirements of this chapter. The legislature and superintendent of public instruction shall have the fifty-six (56) days of the suspension period to file *parens patriae* complaint(s) consistent with the requirements of this chapter. If a patron files a *parens patriae* complaint under this subsection, the legislature and the superintendent of public instruction may intervene as a matter of right pursuant to section 6-2206, Idaho Code, within the time period prescribed by section 6-2206, Idaho Code. If any complaints are filed under this subsection, separate complaints shall be filed for each school district that is a defendant, and venue for such a suit against a school district shall be in the county in which the school district maintains its principal business office. At the expiration of the fifty-six (56) day suspension period described in the first sentence of this subsection, any school districts that are defendants to patron suits or to *parens patriae* suits under this chapter shall be able to answer as provided by the Idaho rules of civil procedure. All further proceedings in such a suit shall be pursuant to this chapter.

(3) Dismissal of entities not parties and transfer of records in pending lawsuit. School districts that were parties to a lawsuit that presented constitutionally based educational claims or counterclaims on the effective date of this section and that are not defendants in any complaints filed pursuant to subsection (2) of this section shall no longer be parties and shall be dismissed from any proceedings that were suspended. Any defendant to a lawsuit that presented constitutionally based educational claims or counterclaims on the effective date of this section and who is not a defendant authorized by this chapter shall be dismissed from any proceeding that was suspended. Any plaintiff, defendant or an intervenor as of right to a lawsuit filed under subsection (2) of this section in which there is a school district that was a party to a lawsuit that presented constitutionally based educational claims or counterclaims and which lawsuit was suspended under subsection (2) of this section may designate the portions of the records of the suspended lawsuit that pertain to the school district. Upon written request of the plaintiff, the defendant, or an intervenor as of right or the court in a lawsuit filed under subsection (2) of this section, those parts of the record designated by the plaintiff, defendant or an intervenor as of right or the court shall be copied by the clerk of the district court of the suspended lawsuit and forwarded to the clerk of the district court presiding over the complaint filed under subsection (2) of this section and shall be included in the record of that case.

[6-2215, added 1996, ch. 258, sec. 1, p. 854; am. 2003, ch. 339, sec. 3, p. 915.]

6-2216. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

[6-2216, added 1996, ch. 258, sec. 1, p. 854.]