

1 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF
2 IDAHO, IN AND FOR THE COUNTY OF ADA

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4 IDAHO SCHOOLS FOR EQUAL) Case No.: 94008
5 EDUCATIONAL OPPORTUNITY, et. al.,)
6 Plaintiffs,)
7 vs.) ORDER DENYING PERMISSIVE APPEAL
8 THE STATE OF IDAHO,)
9 Defendant.)
10

11 On February 5, 2001, this Court released part of its factual findings and two conclusions
12 of law. The Court expressly reserved all factual findings relating to the Silver Valley schools
13 because the evidentiary portion of the trial is still continuing on those schools. The parties had
14 anticipated that the evidence relating to the Silver Valley schools would be submitted to the
15 Court not later than November, 2000, however, it appears that the earliest possible date for the
16 report is now March, 2001. The plaintiffs have reserved the right to put on additional testimony
17 related to the Silver Valley schools which will also mean that the State will be afforded an
18 opportunity to put on additional testimony if necessary. The remedies portion of the trial
19 remains.

20 The Court took the unusual step of releasing part of its factual findings as a courtesy to the
21 legislature. This case involves the interpretation of the legislature's constitutional obligation under
22 Article IX, § 1 of the Idaho Constitution which reads:

23 The stability of a republican form of government depending mainly upon the
24 intelligence of the people, it shall be the duty of the legislature of Idaho, to establish and
25 maintain a general, uniform and thorough system of public, free common schools.

1 This case was filed over ten years ago. It has been to the Idaho Supreme Court three times.
2 *Idaho Schools for Equal Educational Opportunity v. Evans*, 123 Idaho 573, 850 P.2d 724 (1993)
3 (ISEEO I), *Idaho Schools. for Equal Educational Opportunity v. Idaho State Bd. of Educ.*, 128
4 Idaho 276, 912 P.2d 644 (1996) (ISEEO II), *Idaho Schools for Equal Educational Opportunity*
5 *v. The State of Idaho*, 132 Idaho 559, 976 P.2d 913 (S. Ct. 1998)(ISEEO III). The last time it
6 went up, the Supreme Court returned it to the trial court with this direction: “We remand the
7 case to the trial court. On remand, the trial court shall conduct a trial or other appropriate
8 proceeding to determine whether the Legislature has provided a means to fund facilities that
9 provide a safe environment that is conducive to learning. When the trial court has done so, it
10 shall make its decision granting or denying relief. We do not express any opinion at this time
11 about the appropriate relief that should be granted if the trial court decides that Plaintiffs are
12 entitled to relief.” 132 Idaho at 568. This Court followed the direction of the Supreme Court to
13 conduct a trial. The trial is not yet complete. Additionally, the Court has yet to fix relief.

15 Permissive appeals while a case is unresolved are not favored. *Budell v. Todd*, 105 Idaho
16 2, 665 P.2d 701 (1983). Under Idaho Appellate Rule 12, permission to appeal a portion of a case
17 is a rare procedure to be used when there is “a controlling question of law as to which there is
18 substantial grounds for difference of opinion and in which an immediate appeal from the order or
19 decree may materially advance the orderly resolution of the litigation.” At this point, the Court
20 has made forty-seven pages of fact findings and one significant conclusion of law. The Court
21 has concluded that the funding system itself is flawed in that a solely loan-based system of
22 funding to replace or repair unsafe school buildings is not adequate under the Idaho Constitution
23 because the poorest school districts cannot obtain the funding to repair or replace seriously
24 dangerous and defective buildings. The Court has concluded, based upon the facts, that the
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1 problem is a system problem, not just a problem of a few individual schools. Considerable work
2 remains for the Court in fashioning a remedy. Once the final stage is reached, then appeal may
3 follow but, at least, the Supreme Court will have the benefit of the complete factual findings of
4 this Court and will be able to review the remedies employed.

5 The doctrine of separation of powers reflects a significant truth about our system—each
6 branch of government has unique but complimentary powers and limitations. Courts are not well
7 suited to engage in the delicate balancing of interests and overall budget realities which is the
8 special province of the legislative branch. Courts do not set policy for the State like the
9 executive branch. However, courts do resolve specific cases and controversies between actual
10 opposing parties over real and focused disputes involving the obligations imposed by the Idaho
11 Constitution and the Idaho legislature. There should be no doubt in anyone’s mind—if the
12 legislature does not act, the court will. At the same time, the legislature ought to have the first
13 opportunity to utilize its unique power to examine issues, to balance competing interests, and to
14 consider multiple reasonable options to deal with a real problem.

15 Obviously, there is a need for outright aid to repair or replace unsafe schools for the
16 poorest school districts who are suffering from declining population, high unemployment, low
17 income, a low property tax base but high property taxes and which cannot reasonably assume
18 greater debt. An inherent problem with granting relief to eligible schools with the gravest
19 problems is that it can create an incentive to ignore developing problems at a stage where they
20 could be remedied more cheaply. A system of graduated help for districts who are descending
21 into more difficult straits may be wise to prevent problems from worsening, resulting in much
22 greater taxpayer cost.

23 The fashioning of a system which provides a means to fund safe school buildings is, first
24 and foremost, a legislative responsibility. There are a number of different approaches which the
25 legislature might find workable. The legislature’s own 1993 Needs Assessment outlines the

1 approaches followed by other states which have dealt with the same problem Idaho now must
2 address. Alaska appropriates funds which are distributed based upon a priority ranking system:
3 the highest priority is given to life/safety issues, followed by unhoused students, protection of
4 structures, code upgrades, operational cost savings, functional upgrades. Georgia uses matching
5 grants with a ratio which varies based upon the wealth of the district. Washington uses matching
6 grants to make bond passage more palatable to local voters. Lowering the supermajority
7 requirement and creating incentives to help local school districts deal with the repair and
8 replacement needs before students are endangered are among the many possible options which
9 could be followed. Idaho may want to borrow and adapt other approaches or create its own. The
10 Idaho legislature is currently exploring a range of approaches.

11 The legislature has within its power the ability to render this litigation moot. If it fails to
12 act, the Court will have no choice but to act. When this Court issues the complete findings of
13 fact, and implements any required remedies, then this case will be ready for appellate review. To
14 grant a permissive appeal at this point will guarantee piecemeal appeals and unnecessary delay in
15 a case which has already been in the system for over a decade. It seems obvious to this Court
16 that when the Supreme Court remanded the case to the district court for the third time with the
17 instruction that the case be tried, the Supreme Court was of the view that the time had come to
18 bring this case to closure. It would be irresponsible of the Court to grant a permissive appeal at
19 this point. The motion for a permissive appeal is denied.

20 It is so ordered.

21 Dated this ____day of February, 2001.

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24 _____
25 Deborah A. Bail
District Judge