

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

IDAHO SCHOOLS FOR EQUAL EDUCATIONAL)
OPPORTUNITY, MOSCOW SCHOOL DISTRICT)
#281, LAPWAI SCHOOL DISTRICT #341, MUL-)
LAN SCHOOL DISTRICT #392, POTLATCH)
SCHOOL DISTRICT #285, WHITEPINE JOINT)
SCHOOL DISTRICT #286, KENDRICK JOINT)
SCHOOL DISTRICT #283, CASCADE SCHOOL)
DISTRICT #422, ST. MARIES JOINT SCHOOL)
DISTRICT #41, OROFINO JOINT SCHOOL)
DISTRICT #171, CULDESAC JOINT SCHOOL)
DISTRICT #342, GENESEE JOINT SCHOOL DIST-)
RICT #282, HIGHLAND-CRAIGMONT JOINT)
SCHOOL DISTRICT #305, AMERICAN FALLS)
SCHOOL DISTRICT #381, ROCKLAND SCHOOL)
DISTRICT #382, VALLEY SCHOOL DISTRICT)
#262, CHALLIS JOINT SCHOOL DISTRICT #181,)
HORSESHOE BEND SCHOOL DISTRICT #73,)
RICHFIELD SCHOOL DISTRICT #316, BOUND-)
ARY COUNTY DISTRICT #101, KAMIAH JOINT)
DISTRICT #304, WALLACE SCHOOL DISTRICT)
#393, NEZ PERCE DISTRICT #302, COTTON-)
WOOD DISTRICT #242, MIDVALE SCHOOL)
DISTRICT #433, POST FALLS SCHOOL DIST-)
RICT #272, and BONNER COUNTY SCHOOL)
DISTRICT #82,)

Plaintiffs/Counterdefendants,)

BRIAN SILFLOW and GANEL SILFLOW, by and)
through their parents, DALE and PATTI SILFLOW,)
Husband and Wife, DONALD PAUL CREA, by and)
through his father, GARY CREA, ANDY COOK, by)
and through his father, LARRY PRALLY, TAVIA)
GILBERT, by and through her parents, TERRY and)
CAROLYN GILBERT, GREGORY LAMM, by and)
through his mother, KATHY LAMM, SARA KAE)
GOMEZ, by and through her parents, KATHLEEN)

CASE NO. 94008

FINDINGS OF FACT AND

CONCLUSIONS OF LAW

and JOSE GOMEZ, DIETRICH STELLA and)
JENNIFER STELLA, by and through their parents,)
CHARLES and REBECCA STELLA, GREGORY)
DANIELS, by and through his mother, NANCY)
DANIELS, GINA M. DECKER, by and through her)
parents, GENE and LINDA DECKER, JENNIFER A)
ALDER, by and through her parents, MAX and JUDY)
ALDER, ANGELA F. GERRARD, by and through)
her parents, ROGER and RHODA GERRARD,)
CATHERINE A. SPORLEDER, by and through her)
mother, JOANNE SPORLEDER, MORGAN)
ROUNDS and SETH ROUNDS, by and through their)
parents, IVAN ROUNDS and BRENDA ROUNDS,)
KELLI LONGETEIG, by and through her parents,)
WILLFRED LONGETEIG and BEVERLY LONGE-)
TEIG, DON HOFFER, by and through his mother)
KIT HOFFER, SARAH MALLOY, by and through)
her mother, SUSIE MALLOY, KORY TURNBOW,)
by and through his mother, DONAGENE TURN-)
BOW, SHAWNA OLSEN, SHANNON OLSEN and)
RYAN OLSEN, by and through their mother,)
TERESA OLSEN, KRISTA ANN GOETZ, by and)
through her father, ALLEN J. GOETZ, CHAD KNEE)
by and through his parents, KELLY and KAREN)
KNEE, on behalf of themselves and all other school)
people of the State of Idaho similarly situated,)
)
Plaintiffs,)
vs.)
)
THE STATE OF IDAHO,)
)
Defendant-Counterclaimant.)
_____)

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This case came before the Court for trial on March 7 through March 21 and August 30 for the presentation of live testimony. Both sides submitted the majority of the direct testimony in writing although they also supplemented the direct at trial. After the live testimony portion, the plaintiffs also submitted additional testimony by way of post-trial affidavits from superintendent witnesses who testified which will be considered as rebuttal testimony. The motion to strike the supplemental affidavits is therefore denied. The parties also stipulated to the reception into evidence of a September, 2000 report on the Troy Junior—Senior High School. The parties submitted their own proposed Findings and legal arguments to the Court in writing.

Following the initial phase of live testimony, the Court entered an Order for testing of the schools in the Silver Valley. The testing has involved a number of issues, including payment for the testing, the development of a protocol and numerous contacts with school superintendents in the Silver Valley by the parties and the testing entity. Although the Court was advised that the testing could be completed by the end of November, it has not been possible to complete the testing. Having advised the parties, the Court will reserve the Findings of Fact and Conclusions of Law relating to the Silver Valley. Because of the importance of the other issues in this case and the need to give the legislature a fair opportunity to address the findings of this Court, the Court makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

A. Parties.

1. The plaintiffs are the Idaho Schools for Equal Educational Opportunity, an organization of Idaho school superintendents, twenty-six school districts from throughout the State, and a number of parents and their school-aged children.

2. The State of Idaho is the named defendant.

B. Relief requested.

The Seventh Amended Complaint seeks a declaratory judgment pursuant to the Idaho Declaratory Judgments Act declaring “the present level and method of funding for Idaho’s public schools to be unconstitutional.” It also seeks any injunctive, mandamus or other appropriate relief necessary to give force and effect to any declaratory judgment which may be entered. The plaintiffs request costs and attorney fees.

C. Procedural history.

This case has been to the Idaho Supreme Court three times since the filing of the initial complaint based upon the appeal of district court decisions on motions for summary judgment. Each time, the issues have been narrowed. The first Idaho Supreme Court decision involving this case was *Idaho Schools for Equal Educational Opportunity v. Evans*, 123 Idaho 573, 850 P.2d 724 (1993) (ISEEO I). The second decision was *Idaho Schools for Equal Educational Opportunity v. Idaho State Bd. of Educ.*, 128 Idaho 276, 912 P.2d 644 (1996) (ISEEO II). The last appearance before the Idaho Supreme Court defined the only issue remaining for this Court. *Idaho Schools for Equal Educational Opportunity v. the State of Idaho*, 132 Idaho 559, 976 P.2d 913 (S. Ct. 1998)(ISEEO III).

This case is based upon Article IX, § 1 of the Idaho Constitution which reads:

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.

In ISEEO I, the Supreme Court held that the Idaho Constitution did not require uniformity in funding nor did a failure to provide equal per pupil expenditure amount to a violation of equal protection. It remanded the case on the issue of whether the system was “thorough.” It also held that any taxpayer/citizens who did not attend the public schools or have children there, lacked standing to raise a constitutional challenge. It upheld the standing of the school districts and the superintendents’ organization, Idaho Schools for Equal Educational Opportunity, to bring this action.

In ISEEO II, the Supreme Court overturned the district court’s determination that the case was moot because of increased state funding for schools, a change in the funding formula, the enactment of a new definition of “thoroughness,” and a change in the regulations which the Supreme Court had held to be “thorough” in ISEEO I. The Supreme Court concluded that the suit was not moot and that the district court had erred in not allowing the complaint to be amended. It again remanded the case for the district court to address the issue of whether the funding system met the legislature’s obligation under the Idaho Constitution to provide a “thorough system” of public education.

In ISEEO III, the Supreme Court again narrowed the issues in the case. It noted that the legislature had determined that “a safe environment conducive to learning” was an aspect of thoroughness under I. C. § 33-1612. It held that the Idaho Constitution itself required “a safe environment conducive to learning,” and that such an environment was “inherently a part of a

thorough system of public, free common schools” under IX, § 1 of the Idaho Constitution which the Legislature must establish and maintain. “Certainly, the constitutional obligation of the Legislature cannot be read to allow a system of schools that do not provide a safe environment conducive to learning.” ISEEO III, 132 Idaho at 566. The Supreme Court rejected a challenge to the standing of individual plaintiffs whose school districts were not named plaintiffs “...because based on the relief Plaintiffs seek, the school districts bear no responsibility for any State failure to establish and maintain a thorough system of public, free common schools.” Id. at 567. It upheld the district court’s denial of the State’s request to file a third party complaint against the superintendents in the case asserting that any deficiency in providing a thorough education was due to their own management errors and discretionary decisions. It again rejected the plaintiffs’ argument that the Idaho Constitution required equalization of funding for capital expenditures and not submitting special override levy elections to the voters for special facilities levies.

D. The Issue on Remand

In ISEEO III, the Supreme Court concluded that the Legislature has the duty to provide a means for school districts to fund facilities that offer a safe environment conducive to learning. It remanded the case to the district court with this instruction: “[o]n remand, the trial court shall conduct a trial or other appropriate proceeding to determine whether the Legislature has provided a means to fund facilities that provide a safe environment that is conducive to learning.” Id. at 568.

E. Summary of the Court's Findings with Respect to the Issue on Remand

Idaho's schools, particularly those in rural areas, are stretched to the breaking point in meeting the educational needs of their charges. For many schools in rural areas with severely depressed economies, there is not sufficient funding to deal with widespread safety needs while also providing a thorough education for their students. A system based upon loans alone is not adequate to meet the constitutional mandate to establish and maintain a general, uniform, and thorough system of public, free common schools in a "safe environment conducive to learning" for Idaho's poorest school districts.

Funding for Idaho's schools is provided by a combination of local, state and federal funds. Every school district is laboring to stretch limited resources to provide a thorough education. However, many schools are falling behind in meeting even rudimentary educational standards. The poorest districts simply cannot catch up. They have fallen and they cannot rise without the help of the legislature.

There is no question that all Idaho schools could benefit from substantially increased funding. There is likewise no question that there are many different ways to fund school buildings and address urgent safety issues. The choice between the variety of mechanisms available for school funding is committed to the legislative branch under our system of government. The judiciary lacks the power of the legislature to conduct hearings which explore the widest range of possible solutions and balance competing values and interests. The legislature is uniquely well equipped to choose among alternatives which will accomplish its constitutional responsibility in a wise manner. However, it is the role of the judiciary to interpret

the law and it is the obligation of this court to follow the Supreme Court's instructions on remand. In answer to the question on remand, based upon the evidence submitted in this case:

While many Idaho schools are able to scrape the resources together to provide a safe environment that is conducive to learning, there is a gap in the funding mechanism. Schools, primarily in rural areas, with a declining tax base and a struggling economy have no readily available resource to provide funding for major repairs and, particularly, to replace dangerous buildings in any reasonable period of time. The poorest districts have no hope of providing a thorough education in a safe environment conducive to learning. Some of the legislation passed in 2000 did narrow the gap, but there is still a gap. The exact mechanism to close this gap is a legislative determination. There must be some mechanism for districts which cannot reasonably be expected to assume further debt to meet critical safety needs.

The legislature has made serious efforts to improve conditions for all Idaho schools in the past. This Court will not grant further relief at this time, in deference to the legislature's essential and primary function of determining the best legislative solution for an existing problem. This Court was asked to see if a problem exists. It does. The legislature is entitled to the opportunity to apply its own creativity and wisdom to the solution of the problem. The Court will retain jurisdiction as requested but the Court is confident that the legislature will make a good faith effort to deal with the problem. Therefore, the Court will not address further relief at this time.

F. The Legislature's Own Examination of the Safety of Idaho Schools

1. The need for a comprehensive review of the condition of all of Idaho's schools became sharply apparent in the late 1980's and early 1990's. A 1990 Governor's Task Force on the Future of Education in Idaho reported to the State Board of Education that a comprehensive statewide assessment of the current status and likely needs of local public schools with a comprehensive plan to address those needs was essential. In 1991, the Idaho Legislature established the Statewide School Facilities Needs Assessment Committee through its passage of SB1158. The law charged the Committee with the responsibility of conducting a "complete and comprehensive study" of the "current status of public school facilities" including identification of facility, technological and "nontraditional needs" of each school district over the following ten years. Exhibit 1022.

2. As part of its task, the Committee defined the scope of the project and established objectives. The Committee objectives were broad and included the evaluation of key structural features of existing facilities and their potential to take advantage of new technology. A major part of their task included an assessment of the current condition of every school in the State. While many of their objectives were broader than the focus of this litigation, their relevant objectives included to:

- a. develop a comprehensive and uniform inventory of public school facilities;
- b. develop uniform criteria to identify school facility needs;
- c. develop a methodology for assessing building condition;
- d. use their approved methodology to "conduct a comprehensive inventory of existing school facilities, identify existing facility needs, and project future needs based upon

approved criteria; and estimate the costs of meeting current and future needs.” Exh. 1022, pg. 3.

- e. develop recommendations to address existing and future facility needs;
- f. set up a database capable of being updated;
- g. “[a]ssist in the development of recommendations for appropriate school facility standards for Idaho.”

3. The Committee members consisted of representatives of the Idaho State Building Authority, the Idaho School Superintendents, the Idaho School Facility Managers, the Department of Administration, the Department of Labor and Industrial Services, the Idaho Department of Education, the Idaho Association of School Administrators, the Associated General Contractors, the Professional Engineers and Surveyors, the Idaho State PTA, the Idaho Education Association, and the Idaho School Boards Association. The final report was designed to contain a property database with a physical condition audit of each facility and an estimate of the costs to make improvements with a prioritization of improvements including “life/safety considerations, building deterioration and functional improvements.”

4. SB 1158 required that the comprehensive assessment of school facilities be done by an independent contractor. The Committee hired MGT of America as its independent contractor to conduct the comprehensive facilities’ assessment with the help of Architects West of Coeur d’Alene and Lombard Conrad Architects of Boise.

5. The Committee oversaw the work of its staff which included MGT of America, Executive-in-Charge, a Project Co-Director for Design and Analysis who was responsible for the day-to-day management of all project activities related to the design of all project models and

data collection instruments, including the building assessment instruments and training for site evaluators, a Co-Director for Databases, a Senior Architectural Consultant who was also involved in the building evaluation instrument, organizing and conducting site visits, an Educational Consultant, the site visit teams, and other staff members involved in planning future needs, renovation and modernization needs, and data collection, analysis and database development. MGT of America had extensive experience conducting evaluations of the physical condition of school, college and university buildings as part of capital facilities projects.

6. The Committee used a variety of techniques and approaches to gather data on the physical condition of each school, including its suitability for educational purposes. It conducted surveys of district superintendents and officials at each school, gathered information from existing sources and, significantly, had a trained member of a survey team actually visit each school.

7. The Committee developed a building condition evaluation instrument, the Building Condition and Suitability Evaluation Manual, to allow for a uniform system for the evaluation of all Idaho school buildings. The manual had been successfully used in Wyoming, Washington, New Hampshire, South Carolina and California. The manual had a series of check sheets to thoroughly document on site visits and inspections of each building's structural and mechanical systems and its compliance with safety/building code requirements. It was pilot tested in two districts which had recently conducted their own building condition analysis which could be compared against the Committee's approach. The Committee determined that the Manual was adequate and its use would be meaningful, although changes were made to expand the instrument in certain areas to make it even more useful.

8. Because the site evaluation of each school by a trained staff member was a critical component of the Committee's work, the Committee took special steps to ensure uniformity and quality. The number of evaluators was kept to a minimum. They were all trained at the same time to ensure that the techniques used would be consistent. At each site visitation, the visitation was conducted by the project co-director and the educational consultant. The Committee noted that it received excellent cooperation from each district and its staff. When an evaluator arrived in each district, he would meet with the superintendent or representative, discuss the visit and develop a schedule. Generally, the site team was accompanied by a local staff person familiar with the maintenance of each building and its operating systems.

9. The Building Evaluation forms included the following areas for inspection:

- a. Exterior Building Condition—including foundation/structure, walls, roofs, windows doors, trim.
- b. Interior Building Condition—including floors, walls, ceilings, fixed equipment.
- c. Mechanical Systems Condition—including electrical, plumbing, heating, cooling, lighting.
- d. Safety/Building Code—including means of exit, fire control capability, fire alarm system, emergency lighting, fire resistance.
- e. Provision of Handicapped Access

Each school was rated in each category with point ratings from unsatisfactory to good. Portables were inspected but were not included in the overall assessment for any particular school.

10. After evaluating the physical condition of each school building, each building was scored and rated.¹ A school score within the range of 0-30 meant: “Major problems exist; building is dangerous to occupy; very high maintenance and operational costs; renovation/remodeling costs normally higher than replacement costs.” A score in the range of 31-49 meant: “Serious problems exist and need immediate attention, renovation/remodeling costs greater than 50% of replacement costs”. A score in the range of 50-74 indicated that: “Serious problems developing: renovation/remodeling costs greater than 50% of replacement costs.” A score of 75-89 signified only minor problems. A score of 90-100 indicated that no remodeling or renovation was needed.

While admittedly the Committee’s focus was wider than that of this litigation, primarily in the focus on technological readiness and eliminating/anticipating overcrowding, scores below

¹ The 1993 Needs Assessment Report is admissible pursuant to I.R.E. 803(8) which provides:

Public records and reports. Unless the sources of information or other circumstances indicate lack of trustworthiness, records, reports, statements, or data compilations in any form of a public office or agency setting forth its regularly conducted and regularly recorded activities, or matters observed pursuant to duty imposed by law and as to which there was a duty to report, or factual findings resulting from an investigation made pursuant to authority granted by law. The following are not within this exception to the hearsay rule: (A) investigative reports by police and other law enforcement personnel, except when offered by an accused in a criminal case; (B) investigative reports prepared by or for a government, a public office or an agency when offered by it in a case in which it is a party; (C) factual findings offered by the government in criminal cases; (D) factual findings resulting from special investigation of a particular complaint, case, or incident, except when offered by an accused in a criminal case.

The evidence before the Court established that the methodology utilized in obtaining the report was highly reliable and very thorough. There is no indication of any lack of trustworthiness surrounding the report, indeed, the report is a model of its type. See, also, I.R.E. 801(d)(2)(D).

50 for school buildings represent serious safety concerns, not merely difficulty in being upgraded to handle modern technology or an increased student population.

11. At the time of the study, there were 652 schools with 875 buildings. Based upon its thorough assessment of each Idaho school, the Committee concluded that 57% of all Idaho school buildings had serious problems and eight schools were so grossly inadequate and unsafe, that they needed to be replaced outright. While, as mentioned above, the goal of the Committee was broader than analyzing whether a building with serious problems should be repaired or replaced, they estimated a need of \$484 million to replace the eight buildings and fix the remainder to bring them up to “good condition.” Only 86 buildings, in the entire state, scored above 90. While projections of the increased cost for upgrading buildings including all needs have some general usefulness, their utility is limited by the need to discount a certain, but unspecified, amount of the projected costs because they are unrelated to safety issues.² On the other hand, insofar as a cost projection may relate to a structure which must be replaced completely, the figures are more useful since it is improbable that any building would be constructed now which was not able to handle more modern technology.

12. The Committee itself acknowledged that the school facility database, while useful at the time made, would become “more and more out of date with each passing year.” They recommended periodic updates to allow for effective long term planning for school facility needs.

13. In 1999, a very limited effort was made to provide some updated information on the 1993 School Facilities Needs Assessment. The update committee had a tight deadline and a

reduced mandate. No visits by any qualified inspectors were made to any school. The project was initiated on July 29, 1999. The update committee collected reports, including the Department of Building Safety inspection reports and the Department of Education's enrollment reports. It then sent out 113 questionnaires, the week after school started in most districts, with a return time of ten days. The draft report was completed on September 30, 1999. Because the questionnaire arrived when school was just starting and had a short turn around time, and because there were no visits by people qualified to assess the structural integrity of a building or its infrastructure, the 1999 report has very limited usefulness. It is simply not reliable enough to base any conclusions about the safety of Idaho's school buildings. The Court concludes that the only real utility of the report is for the information it contained on the 71 buildings identified as scoring below 50 points in the 1993 Needs Assessment Study. Of those buildings, 18 were removed from service with nine of them being demolished, five being sold and four being taken out of service. Fifty three of the lowest scoring buildings remained in service. Because of the report's limitations, the Court cannot conclude with any certainty what the nature or effect of some of the building renovations noted in the report were, although the 1999 update report concluded that 53 of the buildings identified with serious problems in 1993 had deteriorated.

G. Safety Issues at the Time of Trial

1. Structural Issues.

There are a number of structural problems with Idaho school buildings, particularly older buildings, which render, at least some of them, dangerous for continued occupancy. There are a

² The overall figures for upgrading facilities includes technological upgrades which are not a focus of this lawsuit.

number of other schools which have very serious problems necessitating extensive repair and, in some cases, replacement.

a. The concrete aggregate provided to southeastern Idaho in the late 30's and early 40's was of a lower quality and presents some ongoing concern for the structural integrity of buildings using that concrete aggregate. Foundations built with that aggregate experience significant weakening over time. Other buildings built around the turn of the last century have experienced major structural defects while still others apparently retain their usefulness.

b. The Wendell middle school was built in 1915. Over the years, the building was added onto to increase its capacity. The major structural problems with the 1915 building became apparent to the district when some handicapped elementary students were getting ready to graduate up to middle school. In the process of seeing if the middle school could accommodate their needs, serious defects in the building were discovered. The narrow stairways were too small to allow handicapped access. The building plumbing was deteriorating badly. The electrical system was greatly deteriorated. Like all other school buildings, it had been periodically inspected by the Division of Building Safety, but its major structural defects were never flagged although a number of defects were noted including the lack of guard rails, loose bricks, shelving which could be hazardous and the need to cover exposed electrical panels and conductors. In 1999, the district hired architects and engineers to look at the building and check the concrete strength of the building. While the testing costs blossomed some, it was not prohibitively expensive. The report of the architects and engineers revealed very serious problems. Core samples of the building revealed crumbling concrete. The building was in such poor shape that it was condemned and had to be abandoned. The abandonment of the building

resulted in double shifting with the high school. Middle school students attended the high school part of the week while the high school students attended the rest of the week and on Saturday. The district cannot continue double shifting because the high school students cannot get enough class hours to keep their high school accreditation. High school students who graduate from unaccredited schools face significant obstacles in college admission. The District had reported that the middle school building was satisfactory as far as the safety question in the state accreditation reports up until the very time that the building was abandoned because it was unsafe.

c. The American Falls High School presents a significant risk to its students because of defects which may cause it to fail in an earthquake. The district has acted to reduce the risk.

1. In 1997, the American Falls School District commissioned a seismic analysis of the American Falls High School by Pinnacle Engineers of Meridian, Idaho. The High School was built in 1934. The report concluded that the gymnasium “under a probable seismic event...will fail by collapsing either inwardly or outwardly. The gravity steel frame appears to be stable but is supported laterally by the exterior masonry wall. If the masonry wall fails the potential failure of the gravity system then is possible.” Exhibit 114. The classroom structure is three stories high and was constructed of concrete bearing and shear walls with brick veneer. Structural instability due to the lack of the attachment of the roof diaphragm to the exterior walls was noted. Other serious defects were also noted. The report concluded that: “...under a probable seismic event the parapet wall above the third floor ceiling wall will fail by collapsing both inwardly and outwardly. This would then fail to support the roof which would collapse. These events could lead to the failure of the third and second floor structures in addition to the probable

failure of the second and third floors due to shearing of the masonry wall relevant to the floor diaphragms which would be a total failure of the structure.” Exhibit 114. The Pinnacle Engineering report utilized the FEMA-178 handbook “NEHRP Handbook for the Seismic Evaluation of Existing Buildings” which is designed to determine potential earthquake hazards and to identify components of buildings which could present an “unacceptable risk to human life.” The standards utilized to make the determination of building risk are lower than the design standards for new buildings. The engineer who did the study concluded that the American Falls High School did not meet minimum FEMA standards for earthquake safety.³

2. American Falls High School is in seismic zone 2B which means that it is less likely to experience the severity of seismic activity of a zone 3 area. Thus, the American Falls District is more likely than not in an area of moderate, not high, risk. The High School did go through an earthquake in 1983 of a magnitude of 7.3 which did not appear to affect the integrity of the building. Past performance is certainly one indicator of future performance, however, there was testimony that under FEMA standards, the building would still likely fail.

3. There is no question that standards for earthquake safety have changed and that few buildings constructed before 1960 would meet current requirements. Building codes, including the Uniform Building Code, generally do not require older buildings whose use has not changed to make any structural changes. However, this begs the question about whether an existing building may present an unacceptable risk to human life because of structural defects in the event of an earthquake. While the FEMA standards have not been adopted by the State, there has been

³ The FEMA standards are acceptable for application by the expert architect who testified in this case since they are authoritative standards for the evaluation of the seismic safety of existing buildings. It is not appropriate to disregard the expert’s testimony simply because he could have used other sources.

no showing that they are not a reliable tool in determining whether an existing building may present an undue risk to its occupants in the event of a probable seismic event. Other experts in this case have used the FEMA standards in arriving at their opinion about the seismic safety of school buildings in Idaho. The FEMA standards are specifically designed to address problems which may be present in existing buildings. To some extent, the whole argument about the FEMA standards and UBC standards has been an “apples and oranges” argument. The school district commissioned the study to see if they had a problem and they discovered that they did. They took short-term remedial action to make the building safer and then took action to replace it.

4. No Division of Building Safety advisor or any local official ever indicated any concern about the safety of the American Falls High School.

5. In April 2000, steps were taken by the American Falls School District to lessen the danger posed by the building. Repairs were made during the summer of 2000.

6. The American Falls School District decided that it needed a new High School. It took three unsuccessful attempts before the American Falls School District was able to gain voter approval of a bond to construct the new high school. The building is to be completed by August, 2002. After the building is completed, the old building will no longer be used for classes. At this point, the American Falls School District has concluded that, due to their repairs and the building’s past ability to withstand earthquake damage, the use of the building for a short time more does not place students in risk of “imminent danger.” It will be five years from the time that the danger was discovered until a new structure is built. It took three years to take measures to lessen the danger to the students.

d. The Troy Junior Senior High School building suffers from a number of serious problems. It was constructed in several phases beginning in the early 1900's and continuing through the 1970's.

1. On April 29, 1997 the Idaho State Safety Inspector Jack Chadwell, issued an "Unsafe and Hazardous Conditions Report for the High School" in which he concluded that: "[t]his facility, given its present condition, is no longer safe to occupy in my opinion. I suggest that remedial action be taken ASAP. If this cannot be accomplished I suggest steps be taken to abandon use of this building as it falls in the category of a dangerous building as defined in the Uniform Building Code". Again on May13, 1998, the inspector said: "I strongly suggest that certain parties charged with the safety & well being of all occupants at Troy Jr./Sr. High make a concerted effort to reach an acceptable solution in addressing the Life Safety issues at this facility before injury and or loss of life becomes a reality." Exhibit 117.

2. In 1992, it was estimated that it would cost \$1.5 million to bring the Troy Junior Senior High School up to code standards without addressing handicapped access.

3. The district officials have been unable to do anything other than make short term fixes. A bond levy failed.

4. Patano Architects and a team of consultants were hired by the Whitepine School District to evaluate the physical condition of the Troy High School with a "specific focus on student safety."⁴ The team was composed of architects, structural engineers, mechanical and electrical engineers and a building inspector. The lead architect, J. Michael Patano, was involved

⁴ By stipulation of the parties a report of the Troy High School prepared by Patano Architects was filed with the Court on September 25, 2000. At the request of the parties, the Court takes judicial notice of its contents.

in the Idaho Statewide School Facilities Study and has worked on a number of school planning projects and facility studies in other states. The lead mechanical engineer and principal-in-charge, Roger Chamberlain and DCI Engineers also had considerable experience in school projects. The report identified a number of problems which will be discussed more fully later, however, the team summarized its findings as follows:

“When the consultant team reviewed the overall data collected, the inventory of building deficiencies was somewhat overwhelming. If the district were to address only the life safety issues observed and recorded in this report, in an attempt to provide a safe building where the spaces could be utilized as they are today, the costs would certainly be prohibitive and excessive.” Facility Evaluation of Troy High School, pg. 4.

The team inspected the building and evaluated its structural integrity for seismic loads based upon a FEMA funded handbook: “Rapid Visual Screening of Buildings for Potential Seismic Hazards: A Handbook.” They expressly noted the unreinforced masonry structure used in the building. Structures of this type are “the most hazardous structural building type. They have been observed to fail in many modes during past earthquakes.” Several seriously defective conditions were noted including insufficient anchorage to exterior walls, excessive diaphragm deflection from the decking at the floors and roof, low shear resistance due to the type of mortar used in the building, which was noted to be very soft in most places and completely eroded in areas of high weather exposure, and weak column and beam connections. The type of mortar used in older buildings is often made of lime and sand with little or no cement and very little shear strength. All of the defects make the building likely to collapse upon the occupants in the event of a sufficient seismic occurrence. The building is “seismically hazardous.” There were

other major structural defects noted in the building. Difficulty with ventilation systems, antiquated plumbing, a mixture of electrical wiring and a resulting inability for the wiring to support a “typical HVAC upgrade or computer technology upgrade” were all problems which were noted. A number of fire and general safety defects were detailed including inadequate exits and fire doors. In their summary, the team concluded: “[t]he Troy High School facility, the original 1906 building and the subsequent additions, have reached the end of their useful life. Modernization of this facility, in a cost-effective manner, simply cannot be accomplished.” Facility Evaluation of Troy High School, pg. 29. It was more than five years from the safety inspection report warning that the Troy Junior Senior High School was unsafe for occupancy and recommending its abandonment before there was a more intensive architectural and engineering review. The second review also recommended that the building no longer be used because of serious safety defects. The building is still in use.

5. The District Superintendent, Daryl Bertelsen, testified that the Whitepine community has supported the district to the best of its ability and that the citizens of the district have been as generous as they can be but cannot afford any more levies. The community is not wealthy. The deficiencies in the building have resulted, in its superintendent’s view, in an inability to provide a thorough education because of the direct relationship between the quality of education and adequate and safe facilities.

e. The Genesee School District has facilities composed of a school building constructed in 1912 and added onto in 1938 and 1966. An engineering analysis conducted at the direction of the District revealed that the structure was unreinforced concrete. The District has done some work to shore up the building to lessen the risk of serious harm by a seismic event.

f. In Cottonwood Joint School District #242, roofs are in poor repair. Leaks from the roofs will cause structural damage and have caused electrical shorts, slippery floors and stairs.

g. The Orofino Junior High School was built in 1912 and added onto in 1934. Weippe Elementary School was built in 1927. An engineering report commissioned by the District revealed over \$1 million in major safety repair needs for the Junior High School. The Junior High School has numerous cracks in the exterior walls. The mortar of the brick walls of the 1912 building is in poor condition and brick arches and lintels are deteriorating. Its electrical system is dangerous. It was recommended that the 1912 building be demolished. The 1934 addition lacks the ability to resist lateral wind and seismic loads. Weippe Elementary School needs major structural and foundation repairs as well as mechanical and electrical safety upgrades. Unemployment in the area is in the double digit range. The economy is based on timber and resource based industries. While the district gets some funds from national forest lands in the district, this figure has been declining. At this point, the district can barely cover ongoing maintenance. Bond issues have been unsuccessful. A bond issue of \$.9 million to deal with the Orofino Junior High School and the Weippe elementary school received a “yes” vote of only 48.5% in 1998. The second time the plant facility levy was submitted, it received fewer affirmative votes. The buildings remain in use.

2. Fire safety.

There are widespread fire safety issues. Fire alarm systems are not fully functional in a number of schools: alarms cannot be heard by a large number of the student population, there are no visual alarms for the hearing-impaired, some alarm systems do not alert local fire departments

while others sound repeated false alarms. Many districts report malfunctions. Ancient electrical wiring is dangerously overtaxed with the demands of modern technology. In many older schools, the wiring is embedded in the walls in such a way that the wiring cannot be feasibly upgraded. Older construction methods have resulted in the creation of conditions which would be dangerous in the event of fire. Many buildings lack safe methods for handicapped students to exit in the event of a fire. There are number of problems with the lack of safe corridors and safe fire exits. The specific instances enumerated in this section are illustrative of the nature of the problems experienced but, because there is widespread evidence of deficiencies in fire safety, every deficiency will not be spelled out individually.

a. The fire escapes at the Troy Junior Senior High School cannot bear weight and cannot be safely used. Several classroom exits are blocked. The chemistry lab access to a fire exit is blocked. In general, there are widespread problems with safety exits. The escape stairs are unstable and loose. External fire escapes are in terrible condition and it is unknown whether they would hold up during an emergency. There are multiple fire risk areas identified in the building. Exposed steam pipes present a risk of serious burns if someone were to come into contact with them. There are fire risks from the 1905 wiring. Walls have been blackened as a result of wiring problems. Dead-end corridors were described as “deathtrap[s] in the event of a fire.” In some places, the only means of exit would be for students and teachers to crawl through windows.

b. At the Mt. Hall and Valley View elementary schools in the Boundary Joint School District #101, classroom windows are used for emergency fire exits. There are multiple problems with fire alarm systems in the district.

c. A number of schools report problems with fire alarms which are inadequate or defective. Many schools do not have fire alarm systems capable of being heard everywhere, including some newer schools. Many schools do not have battery backup systems for exits.

d. In Heyburn, a lightning strike disabled a fire alarm system causing it to malfunction and ring in the wrong locations. False alarms have been triggered to the local police and fire stations. The repair costs are estimated at \$55,000.

e. Older electrical systems are often taxed by new technology. In the Cottonwood Joint School District #242, breaker switches trip constantly. In the fall of 1999, a fire broke out in the middle school because the electrical system was badly overtaxed. The electrician who worked on the electrical systems in all of the schools in the Cottonwood District has advised the district that they present a danger. Electricians will no longer certify the Weippe Elementary School electrical system because it is unsafe and there is a serious fire risk.

3. Drainage, Plumbing and Safe Drinking Water.

Some schools experience problems with drainage due to the location of the school. Older schools with the plumbing imbedded in the walls have experienced great difficulty in addressing even common plumbing disasters. In one school district in North Idaho, well contamination resulted in two schools going without safe drinking water for a year. In south Idaho, the water well for one high school has been testing high in nitrates. Local health officials are monitoring the well. It is probable that the school will be required to hook up to city water at considerable cost. Ancient toilets in some buildings are so old and difficult to use that the younger students cannot flush them, which creates health hazards. One elementary school had as much as three

feet of water in the boiler room which, because of the electrical wiring in the boiler room, presented a risk of explosion.

4. Other Safety Concerns

Narrow corridors and stairs in older buildings can present risks to people who are either permanently or temporarily disabled. Students in wheelchairs or on crutches have had difficulty safely negotiating stairs. Stair climbers, used because elevators are too expensive, can present a risk to the user of serious injuries from falling.

In Cottonwood Joint School District No. 242, a staff member in the administrative office suffered a heart attack. While she was given immediate CPR by another staff member, the EMT's could not give her CPR for several minutes as they carried the stretcher down the narrow, steep stairway which was the only exit from her office. The staff member did not survive.

Many schools have serious concerns about security issues because the layout of the school buildings, or the number of doors into and out of a particular building, present a risk that an unauthorized person could gain access to the school campuses. This is a widespread concern cited by many of the superintendents who testified. Unfortunately, this is an issue which has only been highlighted recently because of the school shootings in the last decade and was never a problem envisioned when the buildings were constructed. The need for alarm systems and security lighting was cited by several superintendents. There does not appear to be a general consensus about the way to address these problems.

Asbestos tiles and asbestos wrapped pipes, while previously contained, are deteriorating along with the coverings which had been used to abate their risk. Many schools dealt with

asbestos tile by carpeting over it, however, when the carpet deteriorated and had to be replaced, the schools had the additional problem of having to deal with friable asbestos.

Several schools reported problems with old bleacher systems needing to be replaced because they are decrepit and in danger of collapse. Some of the older styles of bleachers used have spaces large enough for smaller children to fall through.

Snow loading represents a major concern for many schools in mountainous areas and in North Idaho. Buildings have collapsed because of excessive snow loads.

5. Defects in the System of School Safety Inspection

a. At the time of the trial, there were neither safety standards for school buildings nor any reliable safety inspection system. Major problems were identified only when part of a building collapsed or a wall gave way. While building codes impose standards for new construction, old buildings which are being used as originally intended are not generally required to meet any standards. Local officials may inspect buildings for fire safety or school districts themselves may decide to examine safety concerns, however, the lack of any money to deal with repairs or serious problems has, in reality, created a major disincentive for any official to examine the safety of existing buildings. The legislature's 1993 Needs Assessment Study was the only general inspection, by qualified experts, of all Idaho schools to determine if the school structures were safe. Even in areas with extremely serious safety problems because of deteriorated structures, local inspectors have rarely raised any alarm.

b. The Idaho Division of Building Safety conducts only limited reviews of the safety of school buildings in the state. The Idaho Division of Building Safety has a program of industrial

safety to look at safety hazards in all public facilities in the state through a contract with the Industrial Commission. The Division has eight employees to serve the entire state. None of the employees are engineers or architects. They do not make structural integrity inspections of buildings nor do they look at the safety of electrical systems. They do not examine the plumbing, wiring, roofs, mechanical systems, handicapped accessibility or other areas which can pose safety risks. The primary focus of the inspection is to examine the building to determine if there are unsafe or hazardous conditions affecting the employees working in the building. The Division advisors (they are not called inspectors) while aware of various standards applicable to public buildings including schools, generally rely on the existence of other inspectors, i.e., electricians to be aware of electrical system issues. The advisors do look for obvious safety issues—too many plugs in an outlet, absence/inadequacy of handrails. As the testimony established, while the Division advisors may note the number of plugs in the outlet, the fact that the wiring dates back to 1912 and the system itself may be deteriorated or dangerous is outside of their realm of responsibilities. The advisors have very limited enforcement authority and only make recommendations for safety changes.⁵ There is no evidence that they call in other types of inspectors or require anyone else to do so. In fact, the Division recommends that any district with concerns about structural problems contact an architect or engineer. The only authority the Division of Building safety advisors have to close a building relates to elevators or boilers. The Division of Building safety advisors do not use the Uniform Code for the Abatement of Dangerous Buildings, instead relying upon local officials in areas which may have adopted it.

⁵ In spite of these limitations, the inspectors have sometimes raised the alarm as did Mr. Chadwell about the Troy Junior Senior High. Unfortunately, no action was taken on his report.

c. Simple self-reporting systems have not worked to provide meaningful safety information. The questionnaire used in connection with the State accreditation reports which asks if school facilities are safe is simply a “yes/no” question which does not allow for situations where one part of the school facility is deteriorated but the remainder is acceptable. There is no space or provision for a qualified response. Moreover, it is the widespread practice of many superintendents to answer the question as their patrons would answer it rather than to provide their own appraisal. In part, this widespread practice of answering the safety question with a convenient, rather than accurate, response is because of the concern that a loss of accreditation points only harms the students who are seeking admission into college and will not result in any resources to address safety problems. The questionnaires used for the 1999 legislative update of the 1993 Needs Assessment study were sent out with such a short turn-around time and at such an inconvenient time, immediately prior to the start of the school year, that they did not provide useful or accurate safety information.

H. The Funding System and Safety Issues

1. Idaho funds its schools through a combination of local, state and federal funds. School building construction and maintenance is funded by local property taxes. Lottery funds, a relatively small source of funds for the school districts, can be used as well for maintenance and replacement. The bulk of school funding comes from a combination of local property taxes and State general fund revenues. Schools also receive money from the federal government and some limited non-government sources.

2. Bond issues, which require a two-thirds affirmative vote, are the only sources for funding the construction of a new school. Some districts which have dangerous buildings have had repeated failures in obtaining the voter support necessary to replace those buildings with the result that some students are being educated in hazardous buildings. These districts are primarily located in rural areas which have a limited tax base which is already overextended and a severely depressed economy. Many of these districts are taxing their patrons at a much higher rate than those of more prosperous districts. Some districts have housed students in dangerous buildings for years after the danger was apparent because of the arduous task of getting two-thirds of their voters to approve a bond, although they did finally succeed.

3. While the State has argued that these are isolated problems of particular districts, this argument is contrary to the overwhelming evidence in this case. Any district in a severely depressed area with declining property values will experience a difficult, if not impossible task, in getting voter approval to replace dangerous buildings. The 17 superintendents who testified had a total of 233 years of total experience as superintendents, most in multiple school districts. These superintendents had years and years of experience balancing the need to provide as high a quality of education as possible while balancing safety needs and limited resources. Virtually every superintendent had spent most of their working lives as educators. Many of the problems they identified relate to the system itself, not simply to their current school district.

4. The difficulty with relying on bond issues with a supermajority vote for the construction of new buildings or massive repairs to old buildings was outlined by Dr. Nick Hallett, a public school educator for thirty-eight years and a school superintendent for 19 years:

The are two primary detrimental effects when a state relies heavily upon local taxpayers to fund school facilities. High taxable value per pupil districts that enjoy at least average per capita income will find it relatively easy to provide the necessary facilities and equipment for a thorough education. These districts can do so with low taxpayer impact. On the other hand, low taxable value per pupil school districts that are also handicapped with low per capita income will find it difficult, as well as burdensome to taxpayers, to obtain minimal facilities to provide a thorough education. Some of these districts must also cope with the effects of high unemployment rate, a high percentage of minority disadvantaged student population, and a significant agribusiness component in the local economy. When a low tax base district is characterized by a number of these additional factors, it will be extremely difficult to pass needed bond proposals. The effect of bond issue passage will be a very heavy financial burden upon property taxpayers.

5. Most critically, supermajority vote requirements and the type of work required for a bond election are incompatible with serious safety issues necessitating immediate new construction or immediate major repairs. Plant Facility levies require a 55% majority to pass, unless the levy is for more than \$7 million in which case a pass vote of 60% is required. Though plant facility levies represent a reasonable method to raise funds for repairs involving \$7 million or less, bond levies, with the supermajority requirement, are the primary source for funds for new construction. The testimony in this case established a general cost for completely new construction in excess of \$10 million. The glaring gap in Idaho's system of school funding is the lack of any mechanism to deal quickly with major, costly, potentially catastrophic conditions by districts which are low in population, have a low tax base and are in economically depressed areas which cannot fund the cost of totally new construction.

6. The Idaho Department of Education's report, "An Analysis of the Capital Revenue Obtained by Idaho School Districts and Voter Behavior on Capital Issues," prepared by John Augenblick and Justin Silverstein for the Idaho Department of Education dated October 13, 1999 also detailed the problems in obtaining funding for the major repair or replacement of school

buildings. The report was commissioned by the Idaho Department of Education to analyze trends in capital spending across Idaho's school districts and identify factors which might explain the outcome of public votes on capital tax levies. Generally, less wealthy school districts have more difficulty in generating tax levies for capital spending. They also tend to have higher tax rates than wealthier districts and may forego spending on key needs altogether because of the difficulty of obtaining voter approval. The report noted the usual source of obtaining funds for capital purposes: local bond levies, local school plant facility levies, a local supplemental levy, lottery funds and diversion of operating funds. Bond levies tend to be used to obtain large amounts of revenue to construct buildings that have a long life expectancy. School plant facility levies are designed for less costly capital projects, like roof repair. Supplemental levies are used for current operations. In 1997-1998, 73 of 112 school districts obtained revenue from bond levies while 60 of 112 obtained revenue from school plant facility levies. In 1997-1998, the districts obtained \$375.00 per pupil on average from bond levies, supplemental plant facility levies and state aid, with 61.8% coming from bond levies, 27.5% from supplemental plant facility levies and 10.7% from state assistance. While state aid was equal per pupil, there was wide discrepancy on per pupil funds obtained through bond and supplemental plant facility levies.

The study noted, as an item of "some concern", that "over the past five years the property value in wealthy districts has risen at a faster rate than it has in less wealthy districts." Exhibit 3007, p.010017. The report related that a wealthier district is the less likely to use either a bond or supplemental plant facility levy. "And the tax effort districts used to obtain capital revenue was inversely related to their wealth—that is, wealthier districts had lower tax effort, for both

bonds and [supplemental plant facility]levies, than that of less wealthy districts.” Id. With respect to M & O levies, there was no relationship between district wealth and the magnitude of the levies although the poorer districts had the lowest M & O levies. While the study was unable to devise a model to explain voter behavior or predict the success of bond efforts, the problems identified by the report match those identified by the witnesses who testified in this case. The conclusions of this study are supported by the weight of evidence in this case.

7. Replacement of school buildings is the most costly capital expenditure for any district and is normally accomplished through bond levies. Supplemental plant facility levies tend to be used for repairs. Even in wealthier districts, there is considerable difficulty in passing bond levies. It is not unusual for a bond levy to be submitted, and revised, several times before a bond passes. A universal problem is that the long gap between the time the problem is identified and a budget for remedying it is set, and the time between the bond passage causes construction and financing costs to go up so greatly that the amount generated by the bond is no longer sufficient to accomplish its purposes. It is common for districts to make multiple efforts over a number of years to obtain passage of a bond. The passage of time causes costs to go up.

8. There are significant problems arising from the exclusive reliance on local property taxes to fund purchase and construction of capital facilities.⁶ High taxable value per pupil districts that enjoy at least average per capita income do find it relatively easy to provide the necessary facilities and equipment for a thorough education and can do so with low taxpayer impact. However, low taxable value per pupil school districts that also have low per capita

⁶ Although lottery funds can be used for such purposes, the amount of funds received by each district is negligible compared to the cost of new construction.

income have a considerably more difficult time and the burden on their taxpayers is greater. If these districts are coping with high unemployment, a high disadvantaged or minority student population and an economy based on timber, mining or agriculture, the task of obtaining money to fund the safe facilities necessary for a thorough education becomes virtually impossible. The effect of the passage of a bond will be to place a much heavier financial burden on the taxpayers of these areas, areas already struggling, than upon the wealthier districts. For example, according to the Idaho Financial Summaries data, Minidoka County School District has a tax base of \$142,654 ADA⁷ compared to the state average of \$224,567 ADA. Minidoka County has failed to pass a twenty million dollar bond proposal which would have addressed structural, safety and American Disabilities Act deficiencies and overcrowding problems. Minidoka County School District has a depressed agricultural economy, a high unemployment rate, a high percentage of Hispanic students, low taxable value and very low per capita income. While some school districts can make some minor repairs and changes to address urgent safety needs, as the cost of the repairs rises, particularly if building replacement is required, it is neither wise nor feasible to dip into the school operating funds, including the M & O reserves, to meet major needs. Poor districts, with deteriorating economies, low property tax values and low per capita income, are forced to struggle to manage with high bond levy rates or inadequate facilities which present a safety risk to the students who use them, and which result in the districts being unable to provide a thorough education in a safe environment.

9. Idaho's population is moving away from the resource-related communities to the growth centers of the Treasure Valley and Coeur d'Alene. There are large population losses in

⁷ ADA means average daily attendance and is a term of art used in calculating state support for schools.

Pocatello, Sugar-Salem, Soda Springs, Shelley, Grace, Bear Lake and Idaho Falls, in Cassia and Minidoka counties, Buhl, Moscow, Orofino, Kellogg and Grangeville. The effect of the population losses in these primarily rural districts is that the districts are left with fewer students, thus lowering their state per pupil support, to maintain their existing structures. Although costs related to staff are reduced when there are fewer students, since this is primarily the area in which state support is given through a per pupil formula, a district is still faced with the necessity of meeting its ongoing facility maintenance costs. State support is provided for salaries, not capital facility repair or replacement. Moreover, in these more struggling areas, facility override issues tend to fail. More specifically, where counties have a low relative valuation which is concentrated in commercial and industrial property, i.e., Bannock County, school patrons within the county have a much greater than average tendency to reject bond issues.

10. While Idaho's economy is booming in some areas and school districts are growing, there are major negative changes in those areas which have primarily resource-based economies. In 1999, twenty-one districts showed large losses of students, up from fourteen for the previous year. Loss of student population means a loss of State funds. As the population declines, the tax burden on those remaining increases.

11. There is a demonstrable tendency for voters in lower income counties to vote against facility override issues. All of the districts with serious safety hazards had repeatedly approached the voters of their district on bond issues. Many were able to gain a large majority in favor of passage but failed to meet the supermajority requirement. As Reid Straabe of Boundary Joint School District #101 said of the Herculean effort of school districts to pay for repairs of unsafe conditions: "We access every available resource and it's still not enough. It's like paying

the minimum amount on a credit card balance” Many school districts are losing ground. They are using all available sources of funds, repairing as much as possible within their existing funds, while the need for more money just to make repairs grows more rapidly than their available income. They do not have the ability to make repairs within their available funds, it is not a question of redirecting funds from one source to another—they are failing to provide a safe environment while providing a thorough education.⁸

12. The Court will provide some examples of the difficulty in getting funds for major repairs and replacement of dangerous conditions or facilities, however, these are only illustrative of the basis for this Court’s findings. There were so many problems and delays experienced that it is preferable to simply give some examples of the problems in passing bonds and some of the creativity being used to provide funding for safety needs. Examples:

a. Genesee Joint School District #282 attempted to deal with its safety problems several times. Its efforts show the kind of creativity being used to deal with difficult financing issues. The District decided to remodel its facilities and hired an architect. They then pared down costs to a “bare bones” figure. In 1996, the first bond of \$3.3 million dollars failed with a vote of 359, in favor, to 238, opposed. The same bond failed again in 1997. Several months later, the Board ran another bond, this time increased to \$3.5 million to deal with increased construction costs. This bond also narrowly failed, having received a 65.4% positive vote. The board next went with a \$322,000 annual plant facilities levy, which does not require a supermajority vote, for a period of ten years. The benefit of the bond is that it allows a larger amount to be financed over

⁸ Many of these districts must pay teacher salaries above the base supported by the State in order to provide a thorough education. It is prudent management to do so, not, as the State argues an indication of some kind of mismanagement of resources.

a longer period of time at a lower interest rate, however, the District was never able to get the supermajority required. The Board had dropped plans for a needed expansion but still wanted to address health and safety problems. After judicial confirmation, they were able to get a loan of \$2.5 million dollars from First Security to begin construction. Unfortunately, the financing method came at the price of a higher interest rate. The higher interest rate and shorter pay-off period caused higher annual property taxes for District taxpayers. The large increase in property taxes also makes it more difficult for the District to pass its annual supplemental levies. Voter dissatisfaction is now more marked and will have to be overcome. The District has suffered from overcrowding and has not been able to meet its growth needs. The District, through its creative use of other financing methods and some help from its budget was able to deal with its most pressing needs including asbestos removal, removal of open wiring and other key needs. While Genesee has some concerns about security, it has not priced the costs of fixing them. The District is concerned, however, that the oldest building, which is of unreinforced concrete, may need to be replaced although it is still structurally acceptable according to an analysis conducted for the District by a structural engineer. This particular District, because it is near Washington state, is required to pay higher teacher salaries in order to keep talented staff, thus, they pay above the state-supported salary level. This is a reasonable and prudent decision and is no evidence of mismanagement of funds. The so-called "Banker's Bill," discussed hereafter, may prove to be of assistance to this District and others similarly situated.

b. In Jerome School District #261, there have been major problems in using bonds. In 1996, a \$12.6 million bond lost with a 64.5% vote in favor. In 1997, a \$13.9 million bond levy lost with a 66.3% vote in favor. In 1998, a 13.9 million bond lost with a 62.5% "yes" vote. A

smaller levy of \$2.5 million lost with a 48% affirmative vote. A small supplemental levy passed. The district lost a \$10.9 million dollar bond vote for a new middle school with a 59% approval. They do need a new school to provide a thorough education. They have had 9 elections in 5 years, only two have passed. The district has levied the maximum M & O levies permitted by law. The district has tried many different approaches to gain popular support, including surveying the community, using citizen's forums and forming committees. Unfortunately, the district has found that there has been a factionalizing of the community because of its efforts. It is concerned that its inability to construct a new middle school will affect the economic development of the area.⁹ Property tax replacement money has had little effect on the operation of the district.

c. In St. Maries, repeated bond levies from 1980-1986 failed to reach the supermajority requirement. In 1987, a much pared down bond request passed. Supplemental and plant facility bonds, while somewhat more successful, were also difficult to pass.

d. The Cottonwood School District attempted to pass a Bond Levy in the spring of 1996 to address most of its safety problems. The District held 30 public meetings, had nearly 80% of the registered voters turn out and 66.14% of them voted for the bond. It failed with nearly 2 out of every 3 voters supporting it. In November, they ran the same levy again and got exactly the same number of "yes" votes but the opposition registered and got out 60 more no votes, therefore, it too failed. Next they tried a plant facilities levy to accomplish these things over a 10-year period and once again got the same "yes" votes and even more "no" votes. As their

⁹ There is a terrible interplay between deteriorated school buildings and a deteriorating local economy. The more the schools deteriorate, the less likely it is that significant new businesses will relocate to the area, thus, the taxpayer base necessary to fund changes, grows smaller and poorer.

Superintendent, Stan Kress, explained: “By now the people who are opposed to any property tax increases had decided to vote down any and all proposals. Idaho’s requirements for bond passage coupled with no state aid are nearly impossible issues for some districts to overcome. One of the reasons some of our people are anti-property tax is that private citizens own so little of our district. The district once received healthy payments from federal forest funds. This year we will receive less than half what we received just two years ago and 1/3 of the amount of 5 years ago. We had to pass an override levy just to buy paper and books, pay the utility bills and keep the doors open.” The District has been trying to deal with every safety need within their existing budget but finds that it is falling behind.

13. The dilemma for school districts in trying to deal with critical needs incrementally, through an already stretched budget, was eloquently discussed by Superintendent Kress, a superintendent who has been able to do an extraordinary job meeting safety needs and providing a good education¹⁰:

“What I see...is disasters waiting to happen. We hope those disasters will never occur, but you – when you, for example, take three years to replace fire alarms that are totally inadequate in buildings because that's the best you can do is to find money over a three-year money to deal with it, you pray that you made the right decision. You pray that the high school will be the place where the fire starts if you have a fire because you've got a good system there now. You pray it won't be at the middle school, because that will be three years later. If you have roofs that are leaking, you pray that the roofs won't leak so badly that it rots the main structure of the building before you get around to repairing it. You pray that you won't have a handicapped child in a wheelchair enter one of your buildings where you don't have a way to transport them between floors, because if they do, you know you are going to have to stop whatever else you have been doing, the roofs and the fire alarms, and you are going to have to take care of that handicapped issue. You pray over and over again that the problems won't get so bad that your patch and scratch and pass a little levy here as big as you think you can possibly get the voters to pass will

¹⁰ The superintendents who testified are doing a remarkable job meeting the educational and safety needs of their students. Some have made heroic efforts for their districts. Their wisdom and energy devoted to the students of their districts has deeply impressed this Court.

be enough to carry you through and that you won't end up having a disaster before you get to that point. Is that really the way we should be dealing with our children? Is that really the care that we should be offering to them? Is that really the kind of safety that we should be offering? You hope a gun man doesn't come in at the high school and threaten your kids because you don't have any motion detectors, you don't have any videos, you can't lock your doors. You can't deal with that problem, and you know if that were to occur, you haven't set things up the way it should be set up. Should we be in a situation ten years from now and with patch and scratch maybe I can get around to that issue? Or should we be in a situation where we have the kind of help available to us that we can take care of those things in a more timely manner before one of our children is killed or maimed or hurt or seriously injured, let alone whether or not they get a thorough education, and we haven't even dealt much in this testimony whether or not while all of that's occurring, it keeps them from getting the good basic thorough education that the Constitution requires. Thoroughness does require a safe and conducive atmosphere for education, and I don't think we are doing that. And I don't think it's because we don't care, and I don't think it's because we are not trying. And we even take levies to our voters, but we have voters think that the system that's set up at the present time is unfair and not the right one, and we have a tough time passing those kind of levies. So we are not opposed to asking anybody to help us who will help us. But at this point, we think the State needs to get involved, and they are the ones that are charged with providing an educational system to the State of Idaho. School boards and school districts are a development from the State level. It's the State that is ultimately responsible. And they keep just wanting to pass it off to some place else. And I guess if I'm answering your question, they should get involved, because, A, it's their responsibility, and B, because we can't take care of it by ourselves.”

14. The testimony of all of the superintendents who were asked about the adequacy of the State standards in the provision of a thorough education is that the State standards as they existed at the time of trial are inadequate to provide a thorough education. School districts must provide additional educational programs/course work in order for the students of the District to receive an adequate and thorough education. The current State standards for education insofar as they address course work or program offerings are not sufficient to provide for a thorough education according to the overwhelming, and uncontradicted testimony, of the superintendents. It is necessary for school districts to offer programs and classes beyond the minimum levels

provided by the current State standards in order for a district to provide a thorough education.¹¹ In any event, no appreciable savings were shown to result from limiting course or program offerings since teaching staff would still have to be hired to teach the same number of students a more limited course of study. The savings which might result from abolishing all interscholastic sports or music programs would not make a dent in the safety needs of the districts but might very well damage the public support needed to pass bond issues. No contrary testimony was offered at trial.

15. Federal support for timber lands has dropped. If private timber lands are not to be assessed, then the share for other property owners of any levy will be higher resulting in even greater voter resistance to bonds and levies. In general, if property values are dropping or revenue sources have been lost, then the tax burden on the present residents increases which makes bonds or supplemental levies more difficult to pass.

16. It is a reasonable and prudent practice among school administrators to maintain a reserve in the area of 3% to 5% in the M & O category. There are ordinary and necessary operating expenses which come due prior to the receipt of the following fiscal year's state aid. There are emergencies which must be dealt with, particularly in districts which have a number of

¹¹ While in ISEEO I, the Supreme Court opined that the standards set by the State as they existed then were sufficient to provide a thorough education, those standards are no longer in effect. The State offered no evidence to contradict the overwhelming testimony that the standards, as they existed at the time of this trial, must be supplemented by offering additional program and course work. The issue has arisen because the State has countered the allegations of deficiencies in the funding system by alleging that the districts' offering of additional course and program work above the state standards represents some kind of misdirection of funds which could be used to meet safety needs. In this context, the issue becomes one of fact. It is not sufficient, when the plaintiffs have brought forth evidence that the standards are inadequate, to rely solely on the standards themselves. In ISEEO III, the only reference that the Supreme Court made to the standards as they existed at that time was to note that the regulations appeared to be consistent with their "view of thoroughness with respect to facilities." ISEEO III, 132 Idaho at 566. It does not appear that the Supreme Court was considering any State regulations adopted by the Board of Education

older buildings. A number of the superintendents also used the reserve when a holdback was placed on state aid to schools during a general recession in the State. When the State had to reduce its expenses because of an economic downturn, the districts had fixed operating costs which had to be met. District reserves were used to meet these fixed expenses. The reserves are also used to fix less costly safety hazards. Rating services, including Standard and Poor's and Moody's, give more favorable ratings to the bonds of districts which maintain a 3-5% M & O reserve which results in lessening the burden to the taxpayers of the district for bonds. School district auditors also recommend maintaining a reserve in the M & O account. The maintenance of a 5% contingency reserve in a district's General Fund is a prudent and fiscally necessary measure. It allows districts to respond to imminent safety hazards which may develop unexpectedly in the year. The ending cash balance is not a reliable indicator of a district's financial condition. There may be fixed obligations, i.e., salaries, accounts payable, or other obligations which may not have been billed and paid but which will be payable after the end of the accounting period. There is no credible evidence for the argument that any district is amassing an unwarranted and unnecessary cash surplus.

17. The State does provide significant support for the public schools, primarily through salary support for teachers and other school staff, from the State general fund. The funds are apportioned pursuant to a mathematical formula set forth by I.C. § 33-1002(6) which is calculated by determining the number of students in average daily attendance ("ADA"), based upon two reporting periods, with adjustments made on the basis of the number of students in a

relating to course requirements in the context of evaluating whether a district's offering of additional course or program work represented a "misdirection" of funds which ought to be used to address safety needs.

district in a given grade. The figure arrived at is referred to a “support unit” which consists of the measure of student population in average daily attendance, with a number of statutory adjustments, and equalization calculations. Because the legislature has determined that there are significant benefits for lower class size in grades kindergarten through third grade, a different figure is used to determine the support units for those grades. Similarly, because secondary schools tend to break students into smaller, more specialized classes for a number of subjects so that students will change classrooms and teachers through the day, a different figure is used to calculate secondary support units. Different support unit figures are used for “exceptional” students, special needs students and at-risk students. Salary apportionment for teachers is arrived at through formulas reflecting the educational level attained by a particular teacher and his or her years of service. Each ADA support unit generates an allowance of 1.1 instructional staff positions, .075 administrative staff positions, and .375 non-certified staff positions. The end result of all of these calculations is a base salary scale for instructional, administrative and noncertified staff which is reviewed annually by the legislature. In addition to salary support, the State’s contribution includes 9.77% to public employee retirement system (PERSI), 6.20% for social security and 1.45% for Medicaid benefits for each staff allowance. Local districts contribute to the support of their own schools through property taxes. The State sets their contribution at four-tenths percent “of the total state adjusted market value for assessment purposes for the previous year” and the state replacement property tax as determined by statute. Each district is then allowed State aid in the amount necessary to bring the district to the same amount of combined State aid plus the local contribution per support unit through the use of an equalization process, the State foundation funding formula. The higher a school district’s

adjusted market value per support unit the less funding it receives. Districts with lower adjusted market values per support unit receive a greater amount of State assistance. Only two school districts, the Three Creek Joint Elementary District and the Blaine County District No 61, have an adjusted market value per support unit which exceeds the other districts' average of local support and State support.

18. It is necessary for schools near the borders of Oregon and Washington to use district money to supplement State salary support in order to provide their students with a thorough education. Contrary to the State's assertion that these higher salaries somehow represent mismanagement, it is reasonable and prudent financial management for these schools to supplement salaries in order to attract and retain good faculty.

19. While some states provide grants for school construction, others follow other approaches. There is no one approach to financing school buildings. The State of Washington uses state matching grants made the passage of bond issues more palatable to voters.

20. While many of the superintendents also expressed a need for assistance improving technology, making school buildings more "learner friendly" by dealing with heating and cooling systems, and dealing with overcrowding, these issues are not within the purview of this case which is limited to the issue on remand.

I. The 2000 Legislation.

In the 2000 legislative session, the Idaho legislature took a number of steps to assist schools with safety needs. The legislation was not in effect at the time of trial, so the full impact of the legislature's work is not yet known.

1. One of the most important pieces of legislation, Idaho Uniform Public School Building Safety Act, I.C. § 39-8001, while not fully implemented at this stage, addressed the significant problem of the lack of any uniform safety standards and requirements for the inspection of the structural integrity of Idaho's existing school buildings. The legislation created a uniform school building safety code committee empowered to develop a safety code. The committee has not yet created a safety code so it is not possible to determine the full effect of the legislation. Certainly, if the code provides for inspection by qualified experts of school buildings, including the structural integrity of the buildings, safety of electrical and plumbing systems, handicapped access, adequacy of fire alarm systems and security systems, to identify hazards which pose a danger to the occupants of the building, it will address a critical gap in Idaho school safety. The lack of an inspection system which includes structures, wiring, emergency exits and other issues is a major flaw in the system as it existed at the time of trial. The failure to inspect buildings on an ongoing basis has potentially disastrous consequences for both the safety of the teachers and students who use those buildings and the sound financial management of state and local resources because it is a rare problem which gets more serious when it is ignored. Additionally, the new requirement for independent inspection of school facilities to determine if they meet local codes, I.C. § 33-1613(2), and for districts to implement a remediation plan, I.C. § 33-1613(3), will also address the widespread problem of ignoring safety concerns because of the press of other needs.

2. The addition of the School Safety Health Revolving Loan fund, I.C. § 33-1017 for use in abating unsafe or unhealthy conditions discovered through the mandated inspections is also a major step forward in giving districts a new tool to use to remedy unsafe conditions. The fund

was initially funded at \$10 million which may not be adequate in light of the fact that it usually costs in excess of that amount for building replacement, however, the legislature always has the power to increase funding if the initial amount is inadequate and the fund is linked to the “Rainy Day Fund.” As the State notes, the creation of this fund makes the State itself a lender of last resort for school districts.

The increased time to pay for a plant facilities levy from ten to twenty years, I.C. § 33-804A, resulting in lower annual payments, may make plant facilities levies a more attractive option for voters according to several superintendents. The ability to lengthen the repayment period for this type of financing which is commonly used for repairs is a significant step forward.

II. CONCLUSIONS OF LAW

1. While significant strides have been made in providing additional resources to Idaho schools for capital replacement and repair, a system for the replacement and major repairs of unsafe buildings based upon loans alone is not adequate to meet the constitutional mandate to establish and maintain a general, uniform and thorough system of public, free common schools” in a “safe environment conducive to learning” for Idaho’s poorest school districts who lack any reasonable means to repay such loans while maintaining a thorough education for their students.

2. The issue of costs and attorney fees will be addressed after the results from the Silver Valley testing is provided to the Court.

It is so ordered.

Dated: February 5, 2001.

DEBORAH A. BAIL
District Judge