

November 25, 1998

Dr. Thomas E. Dillon, President
State Board of Education
P.O. Box 83720
Boise, ID 83720-0037

**THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE**

Dear Dr. Dillon:

You have asked the Attorney General's Office to provide legal guidance regarding the application of the Cassia County School District No. 151 to declare the Newcomer's Center a "hardship school" pursuant to Idaho Code § 33-1003(2)(b). Specifically, you ask whether the board could determine that the limited English proficiency program of the school qualifies as a "hardship" contemplated by Idaho Code § 33-1003(2)(b).

Our conclusion is that the Newcomer's Center does not qualify as a hardship elementary school. It would be contrary to legislative intent to classify a language barrier as a hardship to the school so as to enable the Newcomer's Center to be counted as a separate elementary school.

ANALYSIS

A. Governing Statutes

Idaho Code § 33-1003 designates five instances where variances in the educational support program will be allowed. Subsection (2)(b) governs the application of the educational support program to separate schools in a given school district when, in the discretion of the state board of education, a school may be eligible for additional support based on "hardship." Idaho Code § 33-1003(2)(b) states:

Upon application of the board of trustees of a school district, the state board of education is empowered to determine that a given elementary school or elementary schools within the school district, not otherwise qualifying, are entitled to be counted as a separate elementary school as defined in section 33-1001, Idaho Code, when, in the discretion of the State Board of Education, special conditions exist warranting the retention of the school as a separate attendance unit and the retention results in a substantial increase in cost per pupil in average daily attendance above the average cost per pupil in average daily attendance of the remainder of the district's elementary grade school pupils.

Separate elementary schools are defined in Idaho Code § 33-1001(8) as:

a school which measured from itself, traveling on an all-weather road, is situated more than ten (10) miles distance from both the nearest elementary school within the same school district and from the location of the office of the superintendent of schools of such district, or from the office of the chief administrative officer of such district if the district employs no superintendent of schools.

Because the question presented arises from conditions not expressly contemplated by these statutes, the legislative intent is controlling in the analysis.

B. Legislative Intent

In the instant case, the school district removed students from other schools where they were receiving language proficiency assistance, placed them at one location with other students with limited English proficiency, and now seeks to qualify under a “hardship” exception to become eligible for additional funding. In essence, the Cassia County school district created its own financial “hardship” by establishing the school and then, based on the circumstance so created, urged an interpretation of “hardship” under Idaho Code § 33-1003(2)(b) that was consistent with the circumstance created. It is our interpretation that both Idaho Code §§ 33-1001(8) and 33-1003(2)(b) were intended to address circumstances beyond the control of the district that caused an increase in the cost of operating the school in question. Thus, the statutes provide for additional support for schools that need additional funding to meet basic operating costs, due to circumstances beyond the control of the district. Nothing in the legislative history indicates that the intent of the legislation would allow a school district to make itself eligible for additional funding by shifting its own enrollment and thereby incurring an increase in operating costs.

Further analysis of the legislative intent of the statute shows that the factors that allow the state board to find a hardship must be related to the school, or schools, in question. In the instant case, the underlying “hardship” is a significant population base with limited English proficiency. However, this is a district-wide issue that is not addressed by Idaho Code § 33-1003(2)(b). The statute states that the board may “determine that a given elementary school . . . [may] be counted as a separate elementary school [when] when special conditions exist warranting the retention of the school” Given this operative language, the “hardship” must be related specifically to the school and not to a district-wide demographic problem.

CONCLUSION

Idaho Code § 33-1003(2)(b) was not intended to allow separate elementary school status under the hardship provision under the facts and circumstances urged by Cassia County school district #151. A review of the legislative history and an examination of the intent of the statute do not support a hardship determination where the financial hardship was self-created by the district. The legislative history also does not permit an interpretation of a district-wide demographic condition as a factor that would entitle a particular school to be designated a separate elementary school as defined in Idaho Code § 33-1001(8).

Very truly yours,

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