

November 18, 2003

Honorable Gary J. Schroeder, Chairman  
Senate Education Committee  
1289 Highland  
Moscow, ID 83843

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

Dear Senator Schroeder:

This Attorney General's Legal Guideline is issued in response to your September 15, 2003, letter to the Office of the Attorney General in which you asked the following questions:

**QUESTIONS PRESENTED**

1. Does the State Board of Education's order that the State Department of Education base funding on "average district per-pupil budgeted expenditure of the previous year for multi-district public charters and non-resident students" and "deduct the funds for public charter schools from the allocation to the resident districts and send them directly to the public charter school where the students are enrolled" prevail over the budgeting and appropriations authority of the legislature?
2. Is the State Board of Education's order to base funding on "average per-pupil budgeted expenditure of the previous year for multi-district public charters and non-resident students" and "deduct the funds for public charter schools from the allocation to the resident districts and send them directly to the public charter school where the students are enrolled" contrary to the FY 2003 session laws and existing laws governing the funding formula for school districts and charter schools?

**CONCLUSIONS**

1. No, only the Idaho Legislature has plenary power and authority to appropriate funds in support of the public school system in this state, and to prescribe the means and manner in which such funds are apportioned to the local school districts and public charter schools. The powers and duties of the State Board of Education (hereinafter "Board") are established by the Legislature by statute, and are limited to the general supervision of the state's public education system. The Legislature has not granted power to the Board to establish a public school funding mechanism, or authority

to modify a school funding plan already legislatively established. Therefore, the Board does not have the legal power or authority to create a mechanism for funding public schools that is contrary to the legislative funding mechanism established by the Legislature. Any such action would encroach upon the appropriation power of the Legislature, in violation of the constitutional doctrine of separation of powers.

2. Yes, the resolution adopted by the Board relating to the funding of certain public charter schools prescribes a means and manner of apportioning funds to such schools that is materially contrary to the funding mechanism established by the Legislature.

## INTRODUCTION

The Legislature adopted the Public Charter Schools Act of 1998, providing for the creation of charter schools that are intended to operate independently from the existing school district structure, but within the existing public school system. *See* title 33, chapter 52, Idaho Code. In doing so, the Legislature also established a plan for apportioning state funds to charter schools by providing that such schools are to be funded in accordance with the legislative funding mechanism applicable to all traditional public schools, with a few minor modifications attributable to certain special considerations relating only to charter schools. Idaho Code § 33-5208. (This general funding mechanism is discussed in greater detail below.)

The Board adopted the following resolution relating to the funding of certain specified charter schools at its August 14 and 15, 2003, meeting:

That, beginning with the 2003-04 school years, the allocation of both state and federal funds be administered so that funding follows students. Funding will be based on average district per-pupil budgeted expenditure of the previous year for multi-district public charters and non-resident students. Funds come from the district of student's residence. The State Department of Education will deduct the funds for public charter schools from the allocation to the resident districts and send them directly to the public charter school where the students are enrolled. Public charters may receive additional funding for special needs students if the State and Federal requirements for such funds are fulfilled. This action is intended to be carried out to the extent it is not inconsistent with federal law or our federal consent decree.

The Board also prepared *Guidance Memorandum 03-01*, which describes the Board's proposed procedure for implementing this funding mechanism, as it relates to such charter schools. A copy of *Guidance Memorandum 03-01* is attached hereto as **Exhibit "A."**

Your questions relate to the legal authority of the Board to promulgate the resolution set forth above, and also to whether the Board’s directive for funding certain public charter schools, as described in the resolution, contravenes state law.

## ANALYSIS

### 1. **The Respective Powers, Duties, and Authority of the Legislature and the Board**

Art. IX, sec. 1 of the Idaho Constitution states that “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.”

Art. IX, sec. 2 of the Idaho Constitution provides that “[t]he general supervision of the state educational institutions and public school system of the state of Idaho, shall be vested in a state board of education, the membership, powers and duties of which shall be prescribed by law.” (Emphasis added.)

The foregoing provisions delineate and define the relationship between the Board, an “executive department” pursuant to Idaho Code § 33-101,<sup>1</sup> and the Legislature—vesting “general supervision” of the state educational system in the Board, but specifically calling on the Legislature to “establish and maintain” the public school system, and also mandating that the Legislature determine the “powers and duties” of the Board.

Pursuant to its constitutional charge, the Legislature enacted title 33, chapter 1, Idaho Code, which sets out the authority of the Board with respect to the Board’s general supervision of the public education system in this state. Idaho Code § 33-101 provides that “[f]or the general supervision, governance and control of . . . the public school systems, . . . a state board of education is created.” Idaho Code § 33-107 grants specific powers and duties to the Board in support of its duty to supervise the state public school system.<sup>2</sup> Additionally, in Idaho Code § 33-5210, the Legislature declared that charter schools are under the “general supervision” of the Board.

This distinction between the power and authority of the Idaho Legislature *vis-à-vis* the power and authority of the Board, as it relates to the Idaho education system, has been recognized by the Idaho Supreme Court, which specifically acknowledged the plenary authority of the Legislature with respect to Idaho’s public schools. *See Andrus v. Hill*, 73 Idaho 196, 200, 249 P.2d 205, 207 (1952) (“there is involved no question of the plenary power of the legislature to provide for, regulate, control and alter the public schools of the state, within the definition provided by the constitutional provision imposing that duty on the legislature.”) *See also Electors of Big Butte v. State Board of Education*, 78 Idaho

602, 612, 308 P.2d 225, 231 (1957) (“the constitution vests the legislature with plenary power as well as a specific mandate to provide for the education of the children of the state, Art. 9, § 1, and the board of education with general supervision of the public school system, Art. 9, § 2 . . . .”)

Pursuant to its plenary power, the Legislature may define and limit the powers and duties of the Board through legislation, as it has done in Idaho Code § 33-107 and Idaho Code § 33-5210, discussed above. The Idaho Code contains no grant of power to the Board to establish a funding mechanism for public schools; nor does it provide authority to the Board to modify a school funding plan already legislatively imposed. The Idaho Code contains no delegation by the Legislature of its power and authority to establish a legislative funding mechanism to the Board. Based on the foregoing, it is our view that the Legislature retains its plenary power and authority in the areas of education, including its plenary power and authority to decide the elements of the mechanism through which the state funds the constitutionally required system of public free common schools.

## **2. Separation of Powers Doctrine**

Any attempt by a department of government to encroach upon the powers granted to another department of government implicates the constitutional separation of powers doctrine. The Idaho Constitution has a three-department system of government, modeled on the United States Constitution, with similar provisions defining the three departments of government—legislative, executive, and judicial.<sup>3</sup> However, the Idaho Constitution differs from the United States Constitution in that art. II, sec. 1 of the Idaho Constitution explicitly mandates that a department shall not exercise any powers properly belonging to one of the other departments:

The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial; and no person or collection or persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this Constitution expressly directed or permitted.

Art. VII, sec. 13 of the Idaho Constitution grants the power of appropriation to the Legislature, and provides that “[n]o money shall be drawn from the treasury, but in pursuance of appropriations made by law.” In furtherance of its appropriations authority, the Idaho Legislature must authorize the executive department to draw money from the Treasury. *Id.*

The Idaho Supreme Court, in Blaine County Inv. Co. v. Gallett, 35 Idaho 102, 204 P. 1066 (1922), held that it is the Legislature that determines the parameters of appropriations, stating:

An appropriation in this state is authority of the Legislature given at the proper time and in legal form to the proper officers to apply a specified sum from a designated fund out of the treasury for a specified object or demand against the state.

*Id.* at 106, 204 P. at 1067.

As discussed above, the Board is an “executive department” of state government pursuant to Idaho Code § 33-101. Consequently, it is prohibited from exercising a power that has been granted to another department—namely, the Legislature’s appropriation power. The Board is bound by the specific mandates contained in the Legislature’s appropriation bills, as well as the specific directions of the Legislature, as set out in statute, relating to the funding of public schools. To assert otherwise would be contrary to the fundamental doctrine of separation of powers. To act otherwise would be beyond the constitutional and statutory authority of the Board.

### **3. Idaho’s Legislatively Established Funding Mechanism—the “*Foundation Program*”**

Each year, the Idaho Legislature appropriates funds in support of the public school system of this state. The primary legislative funding mechanism is a comprehensive and complex system known as the “*Foundation Program*,” codified at title 33, chapter 10, Idaho Code. In addition, specific appropriation bills may contain funding and distribution requirements.<sup>4</sup>

Under the *Foundation Program*, state aid to public schools is allocated through a system designed to support a variety of special programs and services provided by the local public school districts and schools in this state. Some of these programs are described in the addendum, attached hereto as **Exhibit “B.”** Generally, the allocation of state funds to the public schools is determined in accordance with a support unit formula (calculated in accordance with the schedules contained in Idaho Code § 33-1002(6)) that is based on the “average daily attendance” (hereinafter “ADA”) of students in each district and, separately, in each charter school. Idaho Code § 33-1002. In addition to ADA, the legislative funding mechanism also takes into account a variety of other circumstances in allocating funds to the public schools, including the unique characteristics of the various school districts and individual schools, as well as other special considerations, such as local tax contributions, property tax replacement based on the market values of real property in the various school districts, and the “economies of scale” that exist throughout the state, such as the increased costs associated with operating smaller, rural, or isolated schools and districts.

The *Foundation Program* is based on the principle that “funding follows students.” State aid is distributed to the public schools in a series of installments based largely on reported ADA. Idaho Code § 33-1009. The payments made in August, October, and November are advance payments for the current year, but are based on payments from the public school income fund for the preceding school year; the payments relating to the preceding school year are based largely on ADA. Idaho Code § 33-1009(2). Payments in February and May use the state distribution factor (Idaho Code § 33-1002(7)), and are largely a function of ADA reported through the first Friday in November. Idaho Code § 33-1009(3). The July payment takes into account ADA reported using the 28 best weeks of the school year, ending not later than June 30 of the current year. Idaho Code § 33-1009(3)(a). The allocation of state funds to Idaho’s public schools is primarily determined on a school district-by-school district basis. However, the *Foundation Program* was modified by the Legislature in 1998 to provide apportionments also to individual charter schools.

Just as is the case with traditional public schools, charter schools receive the majority of their funding based on “attendance figures,” or ADA. Idaho Code § 33-5208. The allocation of state funds to charter schools is based on the same support unit formula (calculated in accordance with the schedules contained in Idaho Code § 33-1002(6)) applicable to all other public schools.<sup>5</sup> Idaho Code § 33-5208(1). However, specific modifications to the calculations are permitted to offset special considerations applicable only to charter schools, such as lack of taxing authority, as well as to assist charter schools with initial start-up costs. Idaho Code § 33-5208(1)-(5). State aid is distributed to charter schools in accordance with Idaho Code § 33-1009, in the same manner as it is distributed to all other public school districts in the state. Idaho Code § 33-5208(5). In summary, the Legislature has established that state aid to charter schools shall be allocated in accordance with the *Foundation Program*.

#### **4. The Board’s Resolution**

Applying the foregoing constitutional and statutory analysis relating to school funding (and the Legislature’s appropriation power) to the Board’s resolution presents some difficulties, because the language of the resolution is vague, internally inconsistent, and uses terms not defined either in the resolution or in the Idaho Code.<sup>6</sup> Nonetheless, it does appear that the Board’s intent in adopting the resolution, based on the general language used in the resolution, and when read in context with *Guidance Memorandum 03-01*, attached hereto as **Exhibit “A,”** was to describe a particular funding mechanism, at least for *some* charter schools (which we shall hereinafter refer to, collectively, as “multi-district” charter schools), and the following analysis presumes this to be the case.

If the Board’s resolution purports to create either a new funding mechanism or to modify the legislative funding mechanism for public charter schools contained in Idaho Code § 33-5208, then such action would encroach upon the appropriation power of the

Legislature and would be an unconstitutional violation of the separation of powers doctrine. The Board's adoption of the resolution would result in the modification, whether intentional or not, of the legislative funding mechanism as it relates to "multi-district" charter schools.<sup>7</sup>

Pursuant to the resolution, "multi-district" charter schools would no longer receive state funding based on reported ADA and the unique characteristics of such schools, as is required under Idaho Code § 33-5208, and through statutory and special distributions as outlined in the Legislature's appropriation bills.<sup>8</sup> Instead, it appears that the Board's resolution would result in "multi-district" charter schools receiving state funding in a manner different than legislatively established. As we understand the procedure for implementing the resolution, when a new student begins attending a "multi-district" charter school, state funds are to be redirected from the school district in which that student resides (but not the school district where that student necessarily attended) to the "multi-district" charter school, in the amount of the "average district per-pupil budgeted expenditure" during that current school year for a student in that district. This is a method of funding charter schools not authorized by the Legislature.

The Board's resolution presents other significant issues. For example, it purportedly requires a transfer of funds to "multi-district" charter schools in an amount of the "average district per-pupil budgeted expenditure." This would mean that the state funds that would "follow the child" would be based on the funding formula as applied to another district. Under the Board's resolution, for example, "multi-district" charter schools would receive funding for programs provided by the school district in which the student resides, but which the "multi-district" charter school may not provide; an education and experience index for instructional and administrative staff employed by the school district in which the student resides, but not necessarily reflective of the "multi-district" charter school's staff; transportation costs incurred by the district in which the student resides, but not incurred by the "multi-district" charter school (because it may not transport students in buses to school each day); statutory and special distributions in legislative appropriation bills based on ADA of the school district in which the student resides, but not the ADA of the "multi-district" charter school where the student attends; property tax replacement attributable to the district in which the student resides, even though charter schools have no taxing authority; as well as numerous other components related to the school district in which the student resides, but not at all related to the "multi-district" charter school.

Several factors unique to each of Idaho's public schools have large impacts on funding. For example, the employment of highly educated and experienced instructors and administrators results in greater funding. Idaho Code § 33-1004A. Student population demographics also affect state funding. For example, with regard to the calculation of support units, students in kindergarten are funded at a lower rate than those in grades 1-3; students in grades 1-3 are funded at a lower rate than students in grades 4-

6; and students in grades 4-6 are funded at a lower rate than secondary students, alternative school students, and exceptional students. Idaho Code § 33-1002. Additionally, there are numerous other provisions contained in title 33, chapter 10, Idaho Code, under which the number of students served in each of these various categories, or ADA, greatly affects funding as well. Accordingly, any computation of “dollars per student” is necessarily unique to a particular school district or charter school.

Considering these factors, it is clear that the Board’s funding mechanism would benefit “multi-district” charter schools that are successful in attracting students from small, rural school districts, because such districts generally receive a relatively high rate of state funding, when calculated as “dollars per student” (in comparison to “dollars per student” spent in more urban districts). As a result, such “multi-district” charter schools would receive disproportionately higher funding on a per-student basis, when compared to all other charter schools and school districts in the state. In sum, the Board’s resolution prescribes a means and manner of apportioning funds to “multi-district” public charter schools that is materially contrary to Idaho Code § 33-5208.

## **5. Legislative History Relating to the Funding of Public Charter Schools**

The Legislature has previously considered whether charter schools should be funded through a transfer of funds from each child’s former district to the charter school, as the Board’s resolution purports to require. This charter school funding proposition was considered by the Charter School Interim Committee beginning in July 1997. Proposed legislation at that time initially considered a funding provision that would have provided as follows:

*33-5207. DISTRICT CHARTER SCHOOL FINANCIAL SUPPORT. The board of trustees of the school district may make the following apportionments from the educational support program moneys distributed to that school district to each district charter school of the district for each fiscal year:*

*(1) An amount for each student in a district charter school calculated by dividing the total district educational support units for the current fiscal year by the total number of students in the district using the fall enrollment figures. The total district educational education support funds include, before any subtractions or disbursements, all the moneys received by the district.*

However, at its July 24, 1997 meeting, the Charter School Interim Committee rejected this method of funding for charter schools. The minutes of that meeting reflect that:

Representative Tilman asked Ms. Kahler how we can draft legislation that will make dollars follow the students as equitably as possible and **in a way that will not upset the current funding formula.** Ms. Kahler responded that she would treat charter schools almost exactly the same as the school districts are treated now, other than she would not give them any special provisions such as those for remote schools.

Representative Tilman moved, seconded by Representative Gagner, that we **fund charter schools under the statewide average funding formula allocation** as described by Ms. Kahler. Ms. Kahler was asked to work with Ms. Ingram to ensure proper language. The legislation is to be drafted in such a way that it cannot be financially advantageous for a school district to impose charter status on one of its schools or the entire district, i.e., **no school shall be allowed to receive more than the formula generates.**

(Emphasis added.)

In response, the Charter School Interim Committee revised again the funding provision, as it related to charter schools, before presenting the legislation to the House Education Committee. The relevant charter school funding provision of House Bill No. 517, as presented, read as follows:

*33-5208. CHARTER SCHOOL FINANCIAL SUPPORT. From the state educational support program the state department of education shall make the following apportionment to each charter school for each fiscal year based on attendance figures submitted in a manner and time as required by the department of education:*

*(1) Per student support. Computation of support units for each charter school shall be calculated according to the schedules in section 33-1002.6., Idaho Code. Funding from the state educational support program shall be equal to the total distribution factor, plus the salary-based apportionment provided in chapter 10, title 33, Idaho Code.*

It is noteworthy that the statement of purpose relating to H.B. No. 517 provided that in the proposed legislative method of funding for charter schools “[t]he state dollars follow the student moving from one school to another the same way the dollars follow a student moving from one school district to another school within the state of Idaho.” Given this expressed intent, it is clear that the Legislature determined that the method of funding charter schools was to be in accordance with the legislative funding mechanism applicable to all other traditional public schools: the funding mechanism called for under the *Foundation Program*.

## SUMMARY

The Board may not lawfully create its own mechanism for funding public charter schools because the Idaho Legislature has not granted such power and authority to the Board. The resolution adopted by the Board provides for a means and manner of apportioning funds to public charter schools that is materially contrary to the legislative funding mechanism as described in the *Foundation Program*. Such action encroaches upon the appropriation power of the Legislature and amounts to an unconstitutional violation of the doctrine of separation of powers.

This Attorney General's Legal Guideline is not a directive but is an objective review analysis of applicable statutes, as well as our best prediction of how a court of law is likely to view those statutes.

Very truly yours,

WILLIAM A. VONTAGEN  
Deputy Attorney General  
Intergovernmental & Fiscal Law Division

---

<sup>1</sup> Idaho Code § 33-101 provides that “. . . [f]or purposes of section 20, article IV, of the constitution of the state of Idaho, the state board of education and all of its offices, agencies, divisions and departments shall be an executive department of state government.”

<sup>2</sup> Idaho Code § 33-107 provides:

The state board shall have power to

- (1) perform all duties prescribed for it by the school laws of the state;
- (2) acquire, hold and dispose of title, rights and interests in real and personal property;
- (3) have general supervision, through its executive departments and offices, of all entities of public education supported in whole or in part by state funds;
- (4) delegate to its executive secretary, to its executive officer, or to such other administrators as the board may appoint, such powers as said officers require to carry out the policies, orders and directives of the board;
- (5) through its executive departments and offices;
  - (a) enforce the school laws of the state,
  - (b) study the educational conditions and needs of the state and recommend to the legislature needed changes in existing laws or additional legislation;
- (6) in addition to the powers conferred by chapter 24, title 33, Idaho Code;
  - (a) maintain a register of courses and programs offered anywhere in the state of Idaho by postsecondary institutions which are (1) located outside the state of Idaho and are offering courses or programs for academic credit or otherwise; or (2) located within the

---

state of Idaho but not accredited by a regional or national accrediting agency recognized by the board and are offering courses for academic credit. The acceptance of academic or nonacademic credit, at public postsecondary institutions in Idaho, is the prerogative of the state board of education; provided however, credit transferred into Idaho public postsecondary institutions from nonaccredited postsecondary institutions can be accepted only upon positive review and recommendation by the individual postsecondary institutions and with the approval of the state board of education. A nonaccredited postsecondary institution is one which is not accredited by a regional accrediting agency recognized by the state board or the United States department of education,

(b) require compliance by institutions which desire to offer courses or programs in Idaho with the standards and procedures established in chapter 24, title 33, Idaho Code, or those standards, procedures and criteria set by the board,

(c) violation of the provisions of this act will be referred to the attorney general for appropriate action, including, but not limited to, injunctive relief.

(7) prescribe the courses and programs of study to be offered at the public institutions of higher education, after consultation with the presidents of the affected institutions;

(8) approve new courses and programs of study to be offered at community colleges organized pursuant to chapter 21, title 33, Idaho Code, when the courses or programs of study are academic in nature and the credits derived therefrom are intended to be transferable to other state institutions of higher education for credit toward a baccalaureate degree, and when the courses or programs of study have been authorized by the board of trustees of the community college.

(Emphasis added.)

<sup>3</sup> The following provisions for separation of powers under the Idaho Constitution are modeled on the United States Constitution:

**“Legislative power.** — . . . The legislative power of the state shall be vested in a senate and house of representatives.” Idaho Const., Art. III, § 1. **“Supreme executive power vested in governor.** — The supreme executive power of the state is vested in the governor . . . .” *Id.*, Art. IV, § 5. **“Judicial power — Where vested.** — The judicial power of the state shall be vested in a court for the trial of impeachments, a supreme court, district court, and such other courts inferior to the Supreme Court as established by the legislature.” *Id.*, Art. V, § 2.

<sup>4</sup> In 2003, for example, the Legislature appropriated funds to the public school system in House Bill No. 456, H.B. No. 463, Senate Bill No. 1196, S.B. No. 1197, and S.B. No. 1198.

<sup>5</sup> The computation of support units for each charter school is calculated as if it were a “separate school,” as that term is used in Idaho Code § 33-1003.

<sup>6</sup> The first sentence of the resolution appears to apply to all schools and all funds such that “both state and federal funds be administered so that funding follows students.” The second sentence addresses funding for “multi-district public charters” and non-resident students. The term multi-district public charter is not defined in the resolution and appears nowhere in the Idaho Code. In addition, it is unclear whether the reference to “non-resident students” applies only to the undefined “multi-district public charters” or to all non-resident students being educated in Idaho. The fourth sentence calls for a deduction by the State Department of Education of funds for public charter schools from the allocation for the resident districts. Use of the term “public charter schools” in the fourth sentence would appear to be broader than just the previously referenced “multi-district charter schools.”

---

Generally there is confusion within the resolution as to whether: a) it applies to all school funding as the initial sentence indicates; b) whether it applies a different mechanism only to the undefined multi-district charter schools and to non-resident students; c) whether the foregoing reference to non-resident students applies only to non-resident students of charter schools or of multi-district charter schools or to all non-resident students across the board; and d) whether there is yet another disbursement mechanism for all charter schools as set out in the fourth sentence.

The confusion is not particularly resolved in any fashion by *Guidance Memorandum 03-01*, attached hereto as **Exhibit “A.”** It talks about “students participating in the approved multi-district or statewide, individualized computer education or distance learning program (collectively “virtual program”). The balance of the memorandum focuses on “participating students” which appears to relate back to the defined term “virtual program.” However the definition of “virtual program” applies to “approved” multi-district charter schools (a revisiting, with slight addition, to the undefined term used in the resolution) as well as newly described (and equally undefined) “statewide, individualized computer education or distance learning program.”

<sup>7</sup> As described earlier, the Board’s resolution relates to “multi-district” public charters, which is problematic because that term is not used, mentioned, or referenced in either the Idaho Public Charter Schools Act of 1998, title 33, chapter 52, Idaho Code, nor in any of the provisions of the *Foundation Program*. Accordingly, there is no evidence that the Legislature has ever authorized the creation of “multi-district” charter schools, nor are there any currently in existence—there are only charter schools, with specific areas of charter as established under title 33, chapter 52, Idaho Code. The fact that certain charter schools have students who reside in areas outside of the geographic district that granted the charter, does not create “multi-district” charter schools—any more than some students attending a public school while residing outside the geographic district would create a “multi-district” public school. The attempt to create such a distinction for charter schools creates yet another division within the Board’s proposed funding mechanism which is not recognized in the funding mechanism established by the Legislature.

<sup>8</sup> Statutory and special distributions are typically based on the school or district’s ADA. For example, Section 5 of H.B. 1198 (2003) appropriates funds to districts with “a base amount of \$1,500 and a prorated amount based on the prior year’s average daily attendance.”

## EXHIBIT "A"

### \*GUIDANCE MEMORANDUM\*

03-01

Allocation of State and Federal Funds for Multi-District Public Charter Schools

Approved by the State Board of Education  
August 14, 2003

On August 14, 2003, the State Board of Education, under authority from Article IX, Section 2 of the Idaho Constitution and Title 33 of the Idaho Code, issued the following directive.

That, beginning with the 2003-04 school years, the allocation of both state and federal funds be administered so that funding follows students. Funding will be based on average district per-pupil budgeted expenditure of the previous year for multi-district public charters and non-resident students. Funds come from the district of student's residence. The State Department of Education will deduct the funds for public charter schools from the allocation to the resident districts and send them directly to the public charter school where the students are enrolled. Public charters may receive additional funding for special needs students if the State and Federal requirements for such funds are fulfilled. This action is intended to be carried out to the extent it is not inconsistent with federal law or our federal consent decree.

The Board also noted the following points in support of their directive:

- Idaho Code 33-5210(1) states that all public charter schools are under the general supervision of the state board.
- Idaho Code 33-105 states that "the state board shall have the power to make rules for its own governance and the governance of its executive departments and offices..."
- Idaho Code 33-1009 provides that the state board is responsible for "Payments of the state general accounts... and payments of monies other than the state general account appropriation that accrue to the public school income fund..."
- Current Idaho Code directing the funding of public schools is based on legislative intent that educational funding should follow the child. In this way equity and fairness can best be maintained for institutions delivering education to Idaho's children particularly in light of districts' open enrollment policies and delivery of education by non-traditional means.

**Suggested Procedure to Enact Idaho State Board of Education Guidance Memorandum**

1. School will identify the students participating in the approved multi-district or statewide, individualized computer education or distance learning program, including but not necessarily limited to an internet charter school program (collectively, "virtual program").
2. For each participating student, the school will determine the resident/home school district of each student participating in the virtual program.
  - a. Determine the student's home school.
  - b. Determine the student's grade level.

If a participating student was not in attendance at their resident/home school district during the previous school year, due either to home or private schooling status, the student's age (e.g., entering Kindergarten for the first time) or new physical residence (i.e., moved from another location), a determination of the student's home school and grade level shall be made utilizing the student's current physical residence.

3. For each participating student, the SDE will determine the amount of state and federal funding support that the resident/home school district received for each participating student in the preceding school year, or would have received if they fall into any of the categories listed in number two above.
4. The SDE shall deduct from the resident/home school district's funding an amount equal to that which they received the preceding school year for each of the students participating in the virtual program.
5. The SDE will directly provide to the approved virtual program the funding identified in paragraph 4, above. For multi-district or state-wide internet based charter schools, such funds shall not flow through any chartering entity or chartering school district but shall be paid directly to the charter school program.
6. If a participating student is a special population student, such as a Title I or Special Education Student, the approved virtual program shall directly receive the allocated federal funding for the participating child, regardless of the geographical boundaries of the approved virtual program, and so long as the participating approved virtual program fulfills all the state and federal requirements of any other school or school district within the state of Idaho.
7. The total funding following each participating student will be adjusted, as with any school district, through attendance percentages, utilizing a 24/7 calendar with an allowance for carry-over of accumulated educational attendance hours. However, the total funded hours will be set corresponding to maximum educational attendance hours per year, as determined by the state, for each grade level category as follows:
  - a. 450 hours                      Kindergarten

- b. 810 hours            Grades 1-3
- c. 900 hours            Grades 4-8
- d. 990 hours            Grades 9-12

For example, if a program has a 97.5% attendance for their participating student population, the program would receive 97.5% of the funding allocation possible under the parameters as set forth above.

- 8. Advance payments to approved virtual programs shall be based upon an estimated enrollment and estimations of funding allocations utilizing the parameters as set forth above and dispersed by the SDE to the virtual program on the same schedule as they are for other public schools and districts in the state of Idaho.
- 9. Regular payments to approved virtual programs shall be made by the SDE on the same schedule as they are for other public schools and districts in the state of Idaho.

## **EXHIBIT “B”**

### **FOUNDATION PROGRAM**

#### Education Support Program

Includes the state appropriation for general education purposes, including the moneys available in public school income fund as well as miscellaneous revenues. These funds are allocated in accordance with Idaho Code § 33-1002.

#### State Support of Special Programs

The legislature provides funding to local public school districts to support a variety of special programs provided by such school districts, including the following:

- Pupil tuition-equivalency allowance (Idaho Code § 33-1002B).
- Transportation support program (Idaho Code § 33-1006).
- Feasibility studies allowance (Idaho Code § 33-1007A).
- Border district allowance (Idaho Code § 33-1403).
- Exceptional child approved contract allowance (Idaho Code § 33-2004).
- Expectant and delivered mothers allowance (Idaho Code § 33-2006).
- Unemployment insurance benefit payments (Idaho Code § 72-1349A).
- Public school technology program (Idaho Code § 33-1002.2.i).
- Support provisions that provide a safe environment conducive to student learning and to maintain classroom discipline (Idaho Code § 33-1002.2.j).
- Idaho student information management system (Idaho Code § 33-120A).
- Any additional amounts as required by statute to effect administrative adjustments (Idaho Code § 33-1002.2.1).

#### Miscellaneous Funding Appropriated for Specific Purposes

In addition, the legislature appropriates funds for specifically enumerated purposes, such as the following:

- Summer school/alternative school programs (Idaho Code § 33-1002C).
- Property tax replacement (Idaho Code § 33-1002D).
- Appropriations for professional-technical schools (Idaho Code § 33-1002G).

#### Salary-Based Apportionment

Each school district also is entitled to salary-based apportionment funding, which is calculated based upon a complex formula composed of four components: (i) “support units;” (ii) a “staff allowance ratio;” (iii) a “base salary;” and (iv) the “average administrative and instructional experience and education index.” The funding formula for salary-based apportionment is described at Idaho Code § 33-1004E.

### Categorical Funding

In addition to the recurring funding programs described above, the legislature also appropriates funds to support a variety of special programs and purposes on a non-recurring basis. During past years, such funding programs have included appropriations in support of the following:

- Technology grants
- Achievement standards implementation funding
- Safe and drug free schools program
- Idaho reading initiative
- Limited English proficiency funding
- Funds for teacher supplies
- Least restrictive environment/teacher training
- Gifted and talented training
- Teacher support program

### Other Miscellaneous Funding

An additional source of public school district funding in the state is derived from lottery dividends and interest (Idaho Code § 33-905).