

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)	Case No.: 94008
EDUCATIONAL OPPORTUNITY, et. al.,)	
)	RULE 54 B CERTIFICATE RE: FINDINGS
)	OF FACT AND JUDGMENT AND ORDER
Plaintiffs,)	AWARDING MASTER'S FEES WITH A 54
vs.)	(b) CERTIFICATE
)	
THE STATE OF IDAHO,)	
)	
<u>Defendant.</u>)	

The Court hereby orders and this does order that a certificate pursuant to LR.C.P. 54 (b) will issue with respect to the Court's Partial Findings of Fact and Conclusions of Law and the Order and Judgment awarding the masters compensation. This case was remanded to this Court with the instruction that, on remand, the Court hold a trial to determine if the system of funding in Idaho met the Legislature's responsibilities under the Idaho Constitution. The Court determined that it did not. The Court's full determination with respect to this portion of the case was filed on February 5, 2001. Hearings were held thereafter on the Silver Valley schools, a separate and distinct issue and to determine a remedy. Obviously, no court can or will draft legislation. The only true remedy in this case is for the Idaho legislature to draft legislation which will satisfy its duties under the Idaho Constitution. It is the Idaho Constitution which places the ultimate responsibility for the schools with the Idaho legislature. Had the founding fathers of this State wished solely to have placed this responsibility on local governmental bodies, they certainly could have done so. Instead, the founding fathers of this State recognized the unique importance of education to the future of our State and enacted the following provision:

Article IX.

§ 1. Legislature to establish system of free schools.

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.

It is important, not only for the economy of our state and its future as a place where its citizens have the best possible opportunity to use their gifts to support themselves and their families, it is critical to democracy itself that the citizens of our state be well educated through a "general, uniform and thorough" system of public schools. Our founding fathers embodied this vision in the Idaho Constitution. The Idaho Supreme Court held, at a minimum, that this vision requires safe schools. There are many Idaho schools which are unsafe, as this case has revealed. The Court retained jurisdiction of this case to allow the Legislature the opportunity to fully and fairly consider all of the options that they had before them to meet their responsibilities. To date, no major progress has been made.

Courts do not have the right to let others ignore the law. Giving due respect to the separation of powers, this Court has endeavored to create a structure to allow the fashioning of an interim remedy in this extraordinary case by the appointment of a master. A court has the power to appoint a master under the Idaho Rules of Civil Procedure 52(a) and to assess the compensation for the master to either party. The only reason a master is being appointed in this case is that the Legislature has not chosen to address its Constitutional responsibilities. For that reason, the cost was assessed against the State. Upon his appointment, the master, a talented and skilled professional frequently utilized by the State in other contracts, assembled a team and began working. The master moved with great efficiency and skill. The cost of using a master is

substantially less than the cost of the State's experts alone, much less than the cost of both sides hiring experts. The Court has explained this previously. The use of a master will save money for the State of Idaho and will cut years off the progress of this case. The State controller has chosen not to pay the master fees even though an award was entered on February 6, 2003 in the amount of \$11,409.791. No effort at all has been made to appropriate any sums for this first charge and the legislative session is close to ending. It is not reasonable to allow any party to choose to ignore the law. Moreover, the court cannot expect the master to wait months and months for the State to pay each of his bills. It is of the gravest importance to the effective working of the court system and the rule of law that lawful orders be obeyed. The use of masters in exceptional cases has long been recognized. This tool will be unavailable to the court system if a party, no matter who it might be, is free to ignore the rules established by the Idaho Supreme Court governing masters.

This Court must have the guidance of the Supreme Court and a clear and efficient procedure at this point. If the Supreme Court wishes to fashion another remedy, it has the power to do so. The Court will not continue to utilize the master until that procedure is approved by the Supreme Court. The master has already incurred a limited amount of fees which he is entitled to recover. It is in the interests of judicial economy to certify the issues at this time.

Under LR.C.P. Rule Rule 53(a)(1). Masters - Appointment and compensation.

The court in which any action is pending may appoint a special master therein. Except where these rules are inconsistent with the law, the word "master" includes a referee, a commissioner, an auditor, and an examiner. The

¹ The Court asked the master to hold off further action pending the resolution of the writ of mandamus issue which also remains unresolved. However, this Order should render that proceeding moot and allow both parties to appeal.

compensation to be allowed to a master shall be fixed by the court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action which is in the custody and control of the court as the court may direct. The master shall not retain the report as security for compensation; but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party.

For all of these reasons, judgment is hereby entered against the State of Idaho for \$11,409.7 and a certificate of partial judgment shall issue under Rule 54(b). The Court's Partial Findings of Fact and Conclusions of Law are also certified.

It is so ordered.

Deborah A. Bail
District Judge

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment, specifically the Court's Partial Findings of Fact and Conclusions of Law and the Order of Master's Award and Judgment, it is hereby CERTIFIED, in accordance with Rule 54(b), L.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

It is so ordered.

DATED this 25th day of April, 2003

Deborah A. Bail
District Judge