

**IDAHO PROFESSIONAL STANDARDS COMMISSION**

In the matter of the certificates of:

Ryan Kerby,

Respondent

Case No. 21632

**ANSWER TO ADMINISTRATIVE  
COMPLAINT**

COMES NOW, Ryan Kerby, Respondent herein, by and through his attorney, Dan Blocksom, of Blocksom Law & Policy, PLLC, and in Answer to the Administrative Complaint herein, ADMITS, DENIES, AND ALLEGES as follows:

**GENERAL AVERMENTS**

1. Respondent denies each and every averment, allegation, and complaint contained in the Administrative Complaint not specifically admitted to herein.
2. Respondent denies that he violated any laws or code of ethics.
3. Respondent admits the averments contained in paragraph one (1) of the Administrative Complaint.
4. Respondent admits in part and denies in part the averments contained in paragraph two (2) of the Administrative Complaint. The Chief Certification Officer is empowered to file Administrative Complaints that are legal, that do not violate the constitutional and statutory rights of teachers and other certified individuals, and that are not pursued for political reasons.
5. Respondent admits the averments contained in paragraph three (3) of the Administrative Complaint.

6. Respondent partially admits and partially denies the averments contained in paragraph four (4) of the Administrative Complaint. Respondent was the Superintendent of the New Plymouth School District in the 2013-2014 and 2014-2015 school years. During the 2014-2015 school year, however, Respondent was also serving in the Idaho legislature from January 2015, and he was gone from the district most of the time from mid-January to mid-April, and therefore had delegated many of his responsibilities as superintendent. Because he was serving in these two positions concurrently, Respondent agreed to have his superintendent salary reduced by 25% for the 2014-2015 school year, and other administrators/directors took actions as needed in his absence including uploading the teacher evaluation scores into the Idaho System for Educational Excellence (hereinafter "ISEE") system for the 2014-2015 school year.
7. Respondent admits the averments contained in paragraph five (5) of the Administrative Complaint. Respondent alleges that his legal obligations were at best unclear under Idaho law at the time he caused teacher evaluation data to be uploaded into the ISEE system in May 2014. Respondent therefore made a good faith effort in the 2013-2014 school year to use data that was required by a recently enacted law. Respondent held numerous meetings with school administrators and teacher representatives from each school to discuss how to best reconcile the problematic statutory deadlines, and how to score teachers based on the "1" to "4" scale while including student achievement data. Furthermore, Respondent was not involved with the ISEE uploads in May 2015 for the 2014-2015 school year, and was assured by his staff that it was "taken care of."

8. Respondent admits the averments contained in paragraph six (6) of the Administrative Complaint. What paragraph six (6) of the Administrative Complaint fails mention or include is that student achievement data, which was required to be 33% of the final teacher evaluation score,<sup>1</sup> was not available by the statutory May 1 deadline in either May 2014 or May 2015.
9. Respondent denies the averments contained in paragraph seven (7) of the Administrative Complaint because of lack of sufficient knowledge and the paragraph's lack of clarity. If paragraph seven (7) is describing the general process used to generate teacher evaluation scores, then Respondent admits the averments. If paragraph seven (7) is describing what should and/or could have occurred in the 2013-2014 school year, then Respondent denies the averments. The student achievement data, which was required by law to account for 33% of the teacher evaluation scores, was not available by the statutory May 1 deadline, and thus teacher scores could not be issued as stated in this paragraph. If paragraph seven (7) is describing what should and/or could have occurred in the 2014-2015 school year, then Respondent denies the averments. Respondent was not involved with the ISEE uploads for the 2014-2015 school year, and was assured by his staff that it was "taken care of."
10. Respondent denies the averments contained in paragraph eight (8) of the Administrative Complaint because of lack of sufficient knowledge and the paragraph's lack of clarity. Specifically, if paragraph eight (8) is describing what should and/or could have occurred in the 2013-2014 school year, then Respondent denies the averments.

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<sup>1</sup> IDAPA 08.02.02121.03, page 45 on <https://adminrules.idaho.gov/rules/current/08/0202.pdf>.

The student achievement data, which was required by law to account for 33% of the teacher evaluation scores, was not available by the statutory May 1 deadline, and thus teacher scores could not be issued as stated in this paragraph. For the 2013-2014 school year, Respondent was therefore required to upload evaluation scores before they were completed. If paragraph eight (8) is describing what should and/or could have occurred in the 2014-2015 school year, then Respondent denies the averments. Respondent was not involved with the ISEE uploads for the 2014-2015 school year, and was assured by his staff that it was “taken care of.”

11. Respondent denies the averments contained in paragraph nine (9) of the Administrative Complaint. Final teacher evaluation scores were not available by the May 1 ISEE upload deadline in both May 2014 and May 2015. Respondent believed that his conduct was the most honest course of action that he believed was available to him at the time, because by the May 1, 2014 deadline, he knew that all the teachers would have a minimum score of “3,” but he was unsure as to which teachers would receive a “4.” Furthermore, Respondent was not involved with the ISEE uploads for the 2014-2015 school year, and was assured by his staff that it was “taken care of.”
12. Respondent denies the averments contained in paragraph ten (10) of the Administrative Complaint. Not only is this a partial and incomplete paraphrase of Respondent’s statement, the statement is also taken out of context.
13. Respondent denies the averments contained in paragraph eleven (11) of the Administrative Complaint. Final teacher evaluation scores were not available by the May 1 ISEE upload deadline in both May 2014 and May 2015. Respondent believed that his

conduct was the most honest course of action that he believed was available to him at the time, because by the May 1, 2014 deadline, he knew that all the teachers would have a minimum score of “3,” but he was unsure as to which teachers would receive a “4.” Furthermore, Respondent was not involved with the ISEE uploads for the 2014-2015 school year, and was assured by his staff that it was “taken care of.”

14. Respondent denies the allegations contained in paragraph twelve (12) of the Administrative Complaint. In addition to a denial in its entirety, Respondent alleges that this paragraph is unclear, vague, and ambiguous such that Respondent cannot understand exactly what he is charged with, and cannot adequately prepare his defense or for the hearing. Specifically, although this Administrative Complaint alleges that Respondent was the superintendent for both the 2013-2014 and 2014-2015 school years, paragraph twelve (12) contains only one alleged violation. The allegation contains no date as to when this alleged violation occurred. The Administrative Complaint is therefore unclear whether the alleged violation stems from the May 2014 ISEE upload or the May 2015 ISEE upload, or whether both uploads are combined together and considered one violation of the code of ethics. Furthermore, Respondent was not involved with the ISEE uploads for the 2014-2015 school year, and was assured by his staff that it was “taken care of.”

#### **ADDITIONAL DEFENSES**

Respondent hereby reserves the right to present additional defenses as this matter proceeds, particularly with respect to those defenses presently unknown to Respondent.

Respondent hereby asserts the following additional defenses, without assuming any burden of

proof on any issue or relieving Petitioner of its burden to establish each element of its alleged claims.

1. *Vague and ambiguous.* The Administrative Complaint is unclear, vague, and ambiguous such that Respondent cannot understand exactly what he is charged with, and cannot adequately prepare his defense or the hearing. Specifically, although the Complaint alleges that Respondent was the superintendent for both the 2013-2014 and 2014-2015 school years, the Administrative Complaint contains only one alleged violation in paragraph twelve (12). The allegation contains no date as to when this alleged violation occurred. The Administrative Complaint is therefore unclear whether the alleged violation stems from the May 2014 ISEE upload or the May 2015 ISEE upload, or whether both uploads are combined together and considered one violation of the code of ethics. Furthermore, Respondent was not involved with the May 2015 ISEE upload, and was assured by his staff that it had been “taken care of.”
2. *Good faith.* Respondent acted in good faith through the entire ISEE upload process. The teacher evaluation scores could not be finalized by the May 1 deadline because student achievement data would not be available by May 1 for either the 2013-2014 or the 2014-2015 school years. As such, for the May 2014 ISEE uploads, Respondent took the most honest course of action that he believed was available to him at the time. Respondent believed this because he knew that all the teachers would have a minimum score of “3,” and he was unsure as to which teachers would receive a “4.” As for the May 2015 ISEE uploads, Respondent was not involved with the May 2015 ISEE upload, and was assured by his staff that it had been “taken care of.”

3. *Complaint not in the public interest.* Granting the requested relief would not be in the public interest. When Respondent was faced with the quandary of what to do, he acted in good faith. Respondent believed that his conduct was the most honest course of action that he believed was available to him at the time, because he knew that all the teachers would have a minimum score of “3,” and he was unsure as to which teachers would receive a “4.” Both the Idaho Department of Education and the Professional Standards Commission did not provide any guidance, training, or warnings to Respondent or his administration regarding uploading teacher evaluation scores for either the May 2014 or May 2015 ISEE uploads in light of the fact that student achievement data would not be available by the May 1 deadline. After the uploads, Respondent was never later notified by the Idaho Department of Education, the Professional Standards Commission, or any other state agency that he was expected to upload modified teacher evaluation scores once the scores were finalized upon receiving the student achievement data. In addition, in March or April of 2014, then-Idaho Superintendent Tom Luna spoke to a group of school superintendents, which included Respondent, and stated that the Idaho Department of Education was not going to use the teacher evaluation scores, but that perhaps some people doing educational research might use the data. Furthermore, this Administrative Complaint was filed over three years after the first alleged violation of the code of ethics. Respondent is now retired from being a superintendent at the New Plymouth School District, and as such does not have access to his files or his emails. To file an Administrative Complaint when expectations were unclear at best over three years after the fact when Respondent no

longer has access to certain files and emails so that he can ensure that all parties receive the most accurate version of events serves no public interest. The filing of this Administrative Complaint does not have any deterrent value, because the statutory deadline has changed such that Respondent's quandary is no longer a problem that Idaho school superintendents now have to face. It also provides no deterrent value by nature of having been filed so long after the alleged conduct. The filing of this Administrative Complaint does not have any incapacitation value, because Respondent is no longer an educator or superintendent, and thus is currently not using his license. The filing of this Administrative Complaint does not have any restoration value, because as demonstrated herein and in Respondent's affidavit, the Administrative Complaint demonstrates a complete lack of any intent for restoration. Instead, the Administrative Complaint demonstrates a troubling lack of understanding of the operative facts and the key rationale behind Respondent's actions, particularly the problematic statutory deadlines. As such, the Administrative Complaint demonstrates that Petitioner and/or its agents were either ignorant of the complexities of the situation and/or did not seriously consider the Respondent's explanations when he was initially investigated.

4. *No reasonable basis for requested relief.* There is no danger of recurrence of alleged similar violations. For many years, under Idaho Code 33-514 in effect at the time, principals had to complete their annual teacher evaluations by May 1 each year. These involved doing classroom teacher observations, which could be done any time of the year, and the requirement was in Idaho Code 33-514(4). In the 2016 legislative session, the Idaho legislature changed the problematic statutory deadline from May 1 to June 1.



House Bill 515, which was signed into law, shows that multiple May deadlines, including the one at issue in Idaho Code 33-514 (see Section 4 of House Bill 515), were changed to June. The text of House Bill 515 is available here: <https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2016/legislation/H0515.pdf>. By changing the statute, the problem of uploading non-finalized teacher evaluation scores to ISEE was eliminated. This statutory change eliminated entirely the question of what to do with teacher evaluation scores that could not be completed until student achievement scores became available later in May.

5. *Contributory or comparative responsibility/negligence* – Both the Idaho Department of Education and the Professional Standards Commission did not provide any guidance, training, or warnings to Respondent or his administration regarding uploading teacher evaluation scores for either the May 2014 or May 2015 ISEE uploads in light of the fact that student achievement data would not be available by the May 1 deadline. In March or April of 2014, then-Idaho Superintendent Tom Luna spoke to a group of school superintendents, which included Respondent, and stated that the Idaho Department of Education was not going to use the teacher evaluation scores, but that perhaps some people doing educational research might use the data. Furthermore, both the Idaho Department of Education and the Professional Standards Commission did not provide guidance, training, or warnings to Respondent or his administration regarding re-uploading teacher evaluation scores into ISEE after the May 2014 and May 2015 deadlines with scores that were modified based on student achievement data that was later available. As such, Respondent did not even think about going through the typical

re-uploading process to re-upload the finalized teacher evaluation scores. For these reasons, both the Idaho Department of Education and the Professional Standards Commission share in the responsibility for Respondent's actions.

6. *Unclean hands* – The Idaho Department of Education and the Professional Standards Commission did not provide any guidance, training, or warnings to Respondent or his administration regarding uploading teacher evaluation scores for the either the May 2014 or May 2015 ISEE uploads in light of the fact that student achievement data would not be available by the May 1 deadline. In March or April of 2014, then-Idaho Superintendent Tom Luna spoke to a group of school superintendents, which included Respondent, and stated that the Idaho Department of Education was not going to use the teacher evaluation scores, but that perhaps some people doing educational research might use the data. Furthermore, both the Idaho Department of Education and the Professional Standards Commission did not provide guidance, training, or warnings to Respondent or his administration regarding re-uploading teacher evaluation scores into ISEE after the May 2014 and May 2015 deadlines with scores that were modified based on student achievement data that was later available. As such, Respondent did not even think about going through the typical re-uploading process to re-upload the finalized teacher evaluation scores. If the alleged conduct was so egregious as to warrant this Administrative Complaint, the Idaho Department of Education and the Professional Standards Commission had ample opportunity to provide guidance, training, and warnings to Respondent and his staff. As it stands, Petitioner has brought this Administrative Complaint without doing any of those, and also brought this at a time

where Respondent is now unable to remedy the problem by re-uploading final teacher evaluation scores.

7. *Mitigation* – Both the Idaho Department of Education and the Professional Standards Commission did not provide any guidance, training, or warnings to Respondent or his administration regarding uploading teacher evaluation scores for either the May 2014 or May 2015 ISEE uploads in light of the fact that student achievement data would not be available by the May 1 deadline. Furthermore, both the Idaho Department of Education and the Professional Standards Commission did not provide guidance, training, or warnings to Respondent or his administration regarding re-uploading teacher evaluation scores into ISEE after the May 2014 and May 2015 deadlines with scores that were modified based on student achievement data that was later available. As such, both the Idaho Department of Education and the Professional Standards Commission failed to mitigate, or reasonably attempt to mitigate, any perceived violations of the code of ethics. Instead, in March or April of 2014, then-Idaho Superintendent Tom Luna spoke to a group of school superintendents, which included Respondent, and stated that the Idaho Department of Education was not going to use the teacher evaluation scores, but that perhaps some people doing educational research might use the data. If anything, these comments only served to worsen – not mitigate – the likelihood of actions that are charged as ethical violations as in this Administrative Complaint.
8. *Waiver* – Both the Idaho Department of Education and the Professional Standards Commission did not provide any guidance, training, or warnings to Respondent or his

administration regarding uploading teacher evaluation scores for either the May 2014 or May 2015 ISEE uploads in light of the fact that student achievement data would not be available by the May 1 deadline. Furthermore, both the Idaho Department of Education and the Professional Standards Commission did not provide guidance, training, or warnings to Respondent or his administration regarding re-uploading teacher evaluation scores into ISEE after the May 2014 and May 2015 deadlines with scores that were modified based on student achievement data that was later available. In addition to providing no indication to Respondent or his administration that the teacher evaluation scores were to be re-uploaded when finalized, the Professional Standards Commission did not file this Administrative Complaint until over three years after the first alleged violation of the code of ethics. In addition, in March or April of 2014, then-Idaho Superintendent Tom Luna spoke to a group of school superintendents, which included Respondent, and stated that the Idaho Department of Education was not going to use the teacher evaluation scores. The lack of any training, guidance, or warnings, the lapse of time, and the statements from state officials manifesting an intent to waive all demonstrate that Petitioner's ability to bring this Administrative Complaint is waived.

9. *Consent by Petitioner* – Both the Idaho Department of Education and the Professional Standards Commission did not provide any guidance, training, or warnings to Respondent or his administration regarding uploading teacher evaluation scores for the either the May 2014 or May 2015 ISEE uploads in light of the fact that student achievement data would not be available by the May 1 deadline. Furthermore, both the

Idaho Department of Education and the Professional Standards Commission did not provide guidance, training, or warnings to Respondent or his administration regarding re-uploading teacher evaluation scores into ISEE after the May 2014 and May 2015 deadlines with scores that were modified based on student achievement data that was later available. In addition, in March or April of 2014, then-Idaho Superintendent Tom Luna spoke to a group of school superintendents, which included Respondent, and stated that the Idaho Department of Education was not going to use the teacher evaluation scores, but that perhaps some people doing educational research might use the data. By failing to provide any guidance, training, or warnings, both the Idaho Department of Education and Petitioner agreed to, and participated in, the very actions which Petitioner now claims to have been a violation of the code of ethics. Because of such participation and consent, Petitioner's claims are invalid.

10. *Impossibility* – For the 2013-2014 and 2014-2015 school years, the teacher evaluation scores were required to be uploaded into the ISEE system by May 1, 2014 and May 1, 2015 respectively. Of those evaluation scores, 33% had to be based on student achievement, but much if not most of the student achievement data would not be available by May 1 in either of those years. When the May 1, 2014 deadline arrived, Respondent therefore took the most honest course of action that he believed was available to him at the time. It was literally impossible for Respondent to upload a final teacher evaluation score by the statutory May 1 deadline. Furthermore, the ISEE system did not allow Respondent to upload blank scores. In addition, Respondent was not

involved with the May 2015 ISEE upload, and was assured by his staff that it had been “taken care of.”

11. *Laches* – The alleged violation first occurred in May 2014, but this Administrative Complaint was not filed until July 2017, over three years later. Ever since the first alleged violation, multiple events occurred, all of which on their own independently afford evidence of a presumption that Petitioner’s right to file this Administrative Complaint was abandoned. First, Respondent changed his occupation. Respondent won an election to become an Idaho state legislator in 2014 for District 9. He then retired as superintendent in 2015, thus not requiring his teacher certificate for his career anymore. Second, the applicable law changed. In 2016, the Idaho Legislature changed the statutory deadline for teacher evaluation score reporting, thus eliminating the entire problem for ISEE uploads in the 2013-2014 and 2014-2015 school years. Third, the lapse of time has made it more difficult for Respondent to prepare his defense. A complaint, the complainant and contents of which Respondent is still unaware, was allegedly filed with Petitioner in October 2016, even though the alleged conduct occurred in either May 2014 and/or May 2015 (the Administrative Complaint does not specify). The Administrative Complaint was not filed until July 2017. This Administrative Complaint was filed at time where Respondent does not have access to his files and his emails that he had when as a superintendent. The lack of this access makes finding witnesses and evidence that corroborates his version of events more difficult, thus causing great prejudice to Respondent.

**MOTION TO STRIKE**

12. Respondent moves to strike paragraph 10 of the complaint as irrelevant and immaterial.

Paragraph 10 is an incomplete paraphrase of statements that Respondent made in his capacity as a state legislator to a reporter. The statements were taken out of context by the reporter.

**REQUEST FOR ATTORNEY FEES**

13. Respondent is entitled to reimbursement for attorney fees.

**PRAYER**

WHEREFORE, having answered, Respondent prays as follows:

- A. That the Administrative Complaint be dismissed in its entirety;
- B. That the Idaho Professional Standards Commission deliver an apology letter to the Respondent;
- C. That Respondent be awarded litigation costs and attorney fees in defending this matter;  
and
- D. For such other and further relief as deemed just and equitable.

**COUNTERCLAIMS**

Respondent, Ryan Kerby COMPLAINS AND ALLEGES as follows:

**COUNT ONE – Violation of Constitutional Rights (Speech)**

- 1. The foregoing allegations are incorporated as if re-alleged herein.

Petitioner/Counterdefendant is a government entity constituted of individuals who were American citizens and were, at all times relevant hereto, residents of the State of Idaho.

2. Respondent/Counterclaimant, like all other Idaho school superintendents in 2014 and 2015, was required by statute to upload teacher evaluation scores into ISEE system by May 1, 2014 and May 1, 2015 respectively.
3. The student achievement data, which was required by law to account for 33% of the teacher evaluation scores, was not available by the statutory May 1 deadline. As such, final teacher evaluation scores could not be uploaded into the ISEE system by the May 1 deadlines.
4. The Idaho Department of Education and Petitioner/Counterdefendant did not provide any training, guidance, or warnings to Idaho school superintendents on what teacher evaluation scores to upload to the ISEE system by the May 1, 2014 deadline in light of the fact that the student achievement data would not be available by the deadline.
5. By May 1, 2014, Respondent/Counterclaimant knew that all of the teacher evaluation scores would be a minimum of a "3," but he was still uncertain as to which teachers would receive "4"s because the student achievement data was not yet available.
6. Respondent uploaded "3"s for all teachers into the ISEE system in order to meet the May 1, 2014 deadline. Respondent believed that this was the most honest course of action that he believed was available to him at the time, because he knew that all the teachers would have a minimum score of "3," and he was unsure as to which teachers would receive a "4."
7. When the student achievement data became available, Respondent/Counterclaimant caused his staff to update the teacher evaluation scores accordingly. No teachers received evaluation scores lower than "3," but a few teachers received "4"s. The Idaho



Department of Education and Petitioner/Counterdefendant did not provide any training, guidance, or warnings to Idaho school superintendents on whether to reupload the final teacher evaluation scores to the ISEE system. As such, Respondent did not consider re-uploading the final teacher evaluation scores to the ISEE system.

8. Since the May 2014 ISEE upload, Respondent has worked as an Idaho state legislator in the House Education Committee on many education-related pieces of legislation. In doing so, Respondent has taken positions on legislation and helped defeat or amend legislation in a way that he knew was not popular with various state government agencies.
9. Respondent was not involved with the May 2015 ISEE uploads for the 2014-2015 school year, and was assured by his staff that it was “taken care of.”
10. In a special session in June 2015, in his capacity as an Idaho state legislator, Respondent made comments to a news reporter that indicated his disagreement with including teacher evaluation scores into the Career Ladder legislation.
11. In the 2016 legislative session, the Idaho legislature changed the problematic statutory deadline from May 1 to June 1. By doing so, the problem of uploading non-finalized teacher evaluation scores into ISEE system was eliminated.
12. Over two years after Respondent’s/Counterclaimant’s first alleged violation of the code of ethics in May 2014, in October 2016, Respondent received notice from Petitioner/Counterdefendant that a complaint was received. Respondent still has not been provided the complaint, the identity of the complainant, or the investigative report.

13. It is the Respondent's/Counterclaimant's belief that most if not all other Idaho school superintendents engaged in very similar or identical conduct as Respondent/Counterclaimant did for the May 2014 ISEE upload. Despite this, only three superintendents, to Respondent's knowledge, were investigated by Petitioner, and only two superintendents, to Respondent's knowledge, had actual Administrative Complaints filed against them.
14. To the best of Respondent's knowledge, Respondent was one of very few school superintendents that voiced disagreement or stated contrary opinions with the teacher evaluation score process in the media. Based on Respondent's conversations with two other superintendents, Respondent believes that the other superintendents who were investigated and/or received Administrative Complaints were also superintendents who voiced disagreement or stated contrary opinions with the teacher evaluation score process in the media.
15. During the 2016 Idaho legislative session, representatives of a certain state agency approached Respondent regarding some legislation, and asked for Respondent's support. Respondent refused because of several concerns that Respondent had regarding the proposed legislation.
16. In approximately August 2016, Respondent was informed by an employee of a state agency that the Professional Standards Commission was going to pursue an administrative complaint against Respondent. The official stated that Lisa Colon Durham and an employee of the Idaho Board of Education had "cooked up" this administrative complaint to help get teacher evaluation legislation through.

17. The First Amendment to the United States Constitution prohibits abridgement of the freedom of speech, and the First Amendment is incorporated against the states by the Fourteenth Amendment. Persons violating the First Amendment under color of state law are liable at law and in equity under 42 U.S.C. § 1983.
18. The First Amendment to the U.S. Constitution protects Respondent's/Counterclaimant's voicing of his opinion in his capacity as a state legislator.
19. Respondent's/Counterclaimant's free speech rights to voice his opinion as a state legislator outweighed any interest of the Petitioner/Counterdefendant in attempting to limit or suppress that speech by pursuing an investigation and this Administrative Complaint against Respondent/Counterclaimant.
20. Petitioner/Counterdefendant has violated Respondent's/Counterclaimant's First Amendment rights and/or has been complicit in complying with a directive to violate Respondent's/Counterclaimant's First Amendment rights.
21. Petitioner's/Counterdefendant's unlawful actions were done willfully, knowingly and with the specific intent to deprive Respondent/Counterclaimant of his constitutional rights under the First Amendment to the United States Constitution.
22. Petitioner/Counterdefendant has acted with deliberate indifference to the constitutional rights of Respondent. As a direct and proximate result of the acts as stated herein by such of Petitioner/Counterdefendant, Respondent's/Counterclaimant's constitutional rights have been violated which has caused him to suffer physical, mental, and emotional injury and pain, mental anguish, suffering, humiliation, and embarrassment.

23. Respondent/Counterclaimant has no adequate remedy at law and will suffer serious and irreparable harm to his constitutional rights unless Petitioner/Counterdefendant is enjoined from continuing to investigate and file Administrative Complaints against those who publicly disagree with Petitioner/Counterdefendant on certain policy matters.
24. By its conduct, as described herein, and acting under color of state law to deprive Respondent/Counterclaimant of his rights to freedom of speech under the First and Fourteenth Amendments, Petitioner/Counterdefendant is liable for violation of 42 U.S.C § 1983 which prohibits the deprivation under color of state law of rights secured under the United States Constitution. Petitioner/Counterdefendant has violated Respondent's/Counterclaimant's First Amendment right to speech by singling him out and prosecuting this Administrative Complaint against him because of his public disagreement with the teacher evaluation scores process and his legislative activities. Petitioner's/Counterdefendant's actions were taken in retaliation for Respondent exercising his First Amendment rights.
25. As a consequence of Petitioner's/Counterdefendant's actions, Respondent/Counterclaimant has suffered violations of his First and Fourteenth Amendment rights to free speech. Respondent has fear and apprehension that he will again be subject to similar unlawful acts by Petitioner/Counterdefendant, or whoever it is whose directive on which it acted, done for the purpose of limiting and preventing his First Amendment activities.

26. As a direct and proximate result of Petitioner's/Counterdefendant's unlawful actions, Respondent suffered damages including physical, mental, and emotional injury and pain, mental anguish, suffering, humiliation, and embarrassment.

**COUNT TWO – Violation of Constitutional Rights (Retaliation)**

1. The foregoing allegations are incorporated as if re-alleged herein.
2. The First Amendment to the United States Constitution prohibits abridgement of the freedom of speech, and the First Amendment is incorporated against the states by the Fourteenth Amendment. Persons violating the First Amendment under color of state law are liable at law and in equity under 42 U.S.C. § 1983.
3. The First Amendment protects the right to express disagreement over policy and legislative matters.
4. Petitioner/Counterdefendant, while acting under color of state law, violated Respondent's/Counterclaimant's clearly established right against retaliation in violation of the First Amendment because Petitioner's/Counterdefendant's decision to pursue an investigation and this Administrative Complaint against Respondent/Counterclaimant was motivated at least in part by Respondent's/Counterclaimant's constitutionally protected speech.

**COUNT THREE – Violation of Constitutional Rights (Chosen Profession)**

1. The foregoing allegations are incorporated as if re-alleged herein.
2. Respondent is a retired school superintendent who possesses two current and valid education certificates in the State of Idaho.

3. The Administrative Complaint against Respondent demonstrates a troubling lack of understanding of the key operative facts of Respondents' case.
4. Respondent was informed that this Administrative Complaint was pursued against him for political reasons.
5. As a result of this Administrative Complaint, Respondent is in danger of not being allowed to return to his chosen occupation as an educator and school administrator.
6. By allowing this politically motivated investigation and administrative complaint to continue, Petitioner/Counterdefendant is acting under color of state law, and is depriving and will continue to deprive Respondent/Counterdefendant of his constitutional right under the Fourteenth Amendment of the U.S. Constitution to earn a living in a chosen profession without due process of law.
7. By its conduct, as described herein, and acting under color of state law to deprive Respondent/Counterclaimant of his rights under the Fourteenth Amendment, Petitioner/Counterdefendant is liable for violation of 42 U.S.C § 1983 which prohibits the deprivation under color of state law of rights secured under the United States Constitution.

#### **COUNT FOUR – Libel**

1. The foregoing allegations are incorporated as if re-alleged herein.
2. The statements in this Administrative Complaint explicitly and unambiguously refer to Respondent, and thus is so understood by those who read the Administrative Complaint.

3. The statements in this Administrative Complaint are false, libelous, and purport to state facts about Respondent/Counterclaimant which are false.
4. The final disposition of this case may be available to the general public on the Petitioner's website, as are the final dispositions of many other disciplined Idaho school teachers.
5. By failing to dismiss this case at its inception, but instead, by prolonging, causing further investigations, and then filing and prosecuting this Administrative Complaint, Petitioner/Counterdefendant has committed libel against Respondent/Counterclaimant per Idaho Code 18-4801.
6. Petitioner/Counterdefendant is liable to Respondent/Counterclaimant as a result of these false and defamatory statements for actual, presumed and punitive damages in an amount to be determined at trial.

#### **PRAYER**

WHEREFORE, Respondent/Counterclaimant prays for judgment against  
Petitioner/Counterdefendant as follows:

- A. A declaration that Petitioner's/Counterdefendant's conduct violated the First and Fourteenth Amendments to the U.S. Constitution and Respondent's/Counterclaimant's rights under the Idaho state constitution and state law;
- B. For appropriate equitable relief against Petitioner/Counterdefendant as allowed by the Civil Rights Act of 1871, 42 U.S.C. §1983, including the enjoining and permanent restraining of these violations, and direction to Petitioner/Counterdefendant to take

such affirmative action as is necessary to ensure that the effects of the unconstitutional and unlawful practices do not continue to affect Respondent/Counterclaimant;

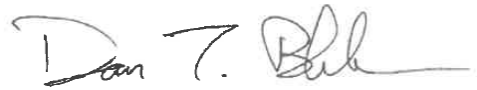
- C. A mandatory injunction requiring that Petitioner/Counterdefendant dismiss this Administrative Complaint and remove any and all negative notations or restrictions on Respondent's/Counterclaimant's certificates;
- D. An injunction enjoining Petitioner/Counterdefendant from engaging in conduct to prevent, discourage, or chill lawful First Amendment activities explained herein;
- E. For an award of compensatory damages to Respondent/Counterclaimant against Petitioner/Counterdefendant, including, but not limited to any emotional distress, recompensable costs related to defenses, and any other compensatory damages as permitted by law and according to proof at hearing;
- F. For exemplary and punitive damages to be awarded to Respondent/Counterclaimant according to proof at hearing;
- G. For a judgment against Petitioner/Counterdefendant in an amount to be determined at hearing;
- H. For an award of costs incurred in this action, including reasonable attorney fees; and
- I. For an award of such other and further relief as deemed appropriate and equitable, including injunctive and declaratory relief as may be required in the interests of justice.



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 28<sup>th</sup> day of August, 2017, I caused a true a correct copy of the foregoing document to be served to the following:

Robert Berry, Deputy Attorney General <i>Professional Standards Commission</i> Office of the Attorney General 700 W. Jefferson St. P.O. Box 83720 Boise, ID 83720-0010 robert.berry@ag.idaho.gov	<input type="checkbox"/> Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Telecopy (FAX) <input checked="" type="checkbox"/> Email at: robert.berry@ag.idaho.gov
Leslie Hayes, Deputy Attorney General <i>Idaho Superintendent of Public Instruction</i> Office of the Attorney General 700 W. Jefferson St. P.O. Box 83720 Boise, ID 83720-0010 leslie.hayes@ag.idaho.gov	<input type="checkbox"/> Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Telecopy (FAX) <input checked="" type="checkbox"/> Email at: leslie.hayes@ag.idaho.gov
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