

IDAHO PROFESSIONAL STANDARDS COMMISSION

In the matter of the certificates of:

Ryan Kerby,

Respondent

Case No. 21632

AFFIDAVIT OF RYAN KERBY

RYAN KERBY, being duly sworn on oath, deposes and says that:

1. I am the Respondent, I am over 18 years of age, and I make this affidavit based on my own personal knowledge.
2. I hold the following certificates and endorsements issued under the authority of the Idaho Board of Education:
 - a. Standard Secondary Certificate with Mathematics 6/12 endorsement – effective September 1, 2016 – valid until August 31, 2021;
 - b. Administrator with Superintendent and School Principal Pre-K-12 endorsements – effective September 1, 2016 – valid until August 31, 2021.
3. I was the Superintendent for the New Plymouth School District from July 1, 1994 to June 30, 2015.
4. For many years, under the requirements of Idaho Code 33-514 in effect until 2016, 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).
5. In August 2013, the Idaho State Board of Education approved a new tentative rule, effective for any evaluations done after July 1, 2013, which required 33% of teacher

evaluations to be based on “multiple objective measures of growth in student achievement” (see archived IDAPA 08.02.02.120.03, which is available at <https://adminrules.idaho.gov/rules/2014/08/0202.pdf>). Furthermore, IDAPA 08.02.02.121.03 required that at least 33% of evaluations of “all certificated instructional employees, principals and superintendents” be “based on multiple objective measures of growth in student achievement” (see archived IDAPA 08.02.02.121.03, which is available at <https://adminrules.idaho.gov/rules/2014/08/0202.pdf>). The types of student achievement data which are allowed to be used in teacher evaluations are found in Idaho Code 33-1001(12). Most of the data on this list, including the data used by the New Plymouth School District and many other districts in Idaho, did not become available until after May 1. This type of data includes “End of Course Assessments,” or “EOC’s,” the Idaho Reading Indicator (“IRI”), SAT and ACT scores, school district assessments, and other metrics.

6. I, like all other Idaho school superintendents, was required to upload teacher evaluation scores for the 2013-2014 school year into the Idaho System for Educational Excellence (hereinafter “ISEE”) system by May 1, 2014.
7. The student achievement data, which was to comprise 33% of each teacher’s final evaluation score, was not available until after May 1, or by the May 2014 ISEE upload. As such, the final teacher evaluation scores could not be uploaded into the ISEE system by the May 2014 deadline.

8. At the time, it was standard practice for the New Plymouth School District to re-upload information into the ISEE system whenever needed throughout a school year with matters related to payroll or state funding. For example, if someone in the District uploaded incorrect teacher certifications, endorsements, or education levels, or incorrect course numbers, incorrect assignment codes, or other such errors, then the District would correct the data and re-upload the corrected data. The District would re-upload the data, print a state report to make sure the data was now correct, and go back and forth with the Idaho Department of Education until data was correct. All data that the Idaho Department of Education needed to use for financial or other reasons was carefully scrubbed until it was correct. It is my understanding that this was and is also standard practice for all other school districts in Idaho.
9. In March or April of 2014, I attended the Spring 2014 Region III school superintendents meeting. Then-Idaho Superintendent Tom Luna was one of the speakers at this meeting. During Mr. Luna's session with the superintendents, Mr. Luna was talking about the problematic early deadline for the ISEE upload, and he took questions from the audience. One of the superintendents in attendance asked Mr. Luna who at the Idaho Department of Education was going to get access to the teacher evaluation data when received, and what the data would be used for. Mr. Luna replied that the Idaho Department of Education was not going to use the data, but that perhaps some people doing educational research might use the data.
10. The Idaho Department of Education and the Professional Standards Commission did not provide any training, guidance, or warnings to me or my principals on what teacher

evaluation scores to upload to the ISEE system by the May 2014 ISEE upload date in light of the fact that the student achievement data would not be available by the upload date.

11. By May 1, 2014, based on input from the school administrators from each school in the New Plymouth School District during administrative team meetings, we knew that all of the teacher evaluation scores would be a minimum of a "3," which is "proficient." By May 1, 2014, my administrative team and I could not yet determine for certain which teachers would receive "4"s, which is "distinguished," because the student achievement data, which was to comprise 33% of the evaluation scores, was not yet available. I would have preferred to wait until June 2014 to perform the ISEE upload to upload teacher evaluation data when the scores would have been finalized and accurate. I had my IT director, Irene Trunnel, contact the Idaho Department of Education to see if this would be possible, but she was told it was not, and that all fields in the ISEE upload needed to be filled that month. It is my understanding that many other Idaho school superintendents would have preferred uploading the data in June 2014 as well.
12. Each and every field in the ISEE system had to be filled with data or the entire school district ISEE upload could not be completed. Without entering some placeholder number into the ISEE upload field for each teacher, the New Plymouth School District would not get its next foundation payment, which is essential for funding school operations such as payroll, from the Idaho Department of Education.
13. On or before May 1, 2014, I caused to be uploaded into the ISEE system the administrative team's best guess of "3" for each teacher, which I and my team felt was

the only honest number that we could provide at that time. It is my understanding that many other Idaho school superintendents took similar or identical actions as well.

14. When the student achievement data became available later in May 2014, each of the New Plymouth School District school administrators finalized their teacher evaluations, and the finalized evaluations were placed in the permanent files at the district office. No teachers in the New Plymouth School District received evaluation scores lower than "3" as I had anticipated, but some teachers earned "4"s. It is worth noting that for purposes of salary movement under the Career Ladder, whether a teacher received a score of "3" or "4" made no difference. Therefore, for purposes of salary movement under the Career Ladder, uploading our conservative estimate of "3"s by May 1, 2014 for all the teachers had the exact same effect as would have been had if the final evaluation scores had been re-uploaded.
15. The Idaho Department of Education and the Professional Standards Commission did not provide any training, guidance, or warnings to me or my principals on whether to re-upload the final teacher evaluation scores to the ISEE system. Any such guidance, training, or warnings would have caused me and my administrative to make sure that the data was scrubbed, accurate, and ready for use, as was the New Plymouth School District's standard practice for handling data corrections. Furthermore, because of Mr. Luna's remarks, I was of the understanding that the Idaho Department of Education was not going to use the scores. As such, I did not consider re-uploading the final evaluation scores to the ISEE system.

16. In November 2014, which was during the 2014-2015 school year, I was elected as an Idaho state legislator for Legislative District 9. As such, I served in the Idaho legislature from January 1, 2015, and I was gone from my office with the New Plymouth School District for most of the time from mid-January to mid-April. I therefore had delegated many of my responsibilities as superintendent. Furthermore, because I was serving in these two positions concurrently, I agreed to have my superintendent salary reduced by 25% for the 2014-2015 school year. Other administrators and directors took actions as needed in my absence including uploading the teacher evaluation scores into the ISEE system for the 2014-2015 school year.
17. The same problems with the statutory deadline described above still existed in the 2014-2015 school year for the May 2015 ISEE uploads.
18. Because I was serving in the legislature, I 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." I did not provide any directive to my staff as to what to upload.
19. In January through April of 2015, I was serving as an Idaho state legislator in the Idaho legislature. I spent much of the 2015 legislative session working to make changes to the proposed Career Ladder legislation. I was able to help make numerous changes to the legislation, but was not able to extract teacher evaluations from being a significant part of the process. The New Plymouth School District had made huge strides in improving student achievement data during the past decade, and the teachers, administrators, and board members knew that teacher evaluations were not how they had been able to make those very significant improvements. Rather than relying on teacher evaluations

to improve learning, the New Plymouth School District used good curriculum; data analysis of high quality formative, interim and summative assessments; professional development; a tremendous amount of collaboration by all affected parties; and goal setting; along with other efforts.

20. By the end of debate on the Career Ladder, I voted for the Career Ladder bill, but still felt strongly that using teacher evaluations as a part of pay raises would not improve student learning in Idaho. In May 2015, I was serving as an Idaho state legislator in the Idaho legislature during an extraordinary session

21. When on the floor of the Idaho House of Representatives during a recess from deliberations during the May 2015 extraordinary session, I was asked some questions by a news reporter, Clark Corbin. I made comments to him that indicated my disagreement with teacher evaluation scores being a part of the Career Ladder. The statements that he apparently quoted were as follows:

- a. "Our school district [the New Plymouth School District], quite unanimously, did not figure the state needs to know all that individual teacher data."
- b. "We [the New Plymouth School District] feel the state should be concerned with whether kids are learning, not if Mrs. Smith got 'proficient' or 'unsatisfactory' or 'basic.'"
- c. "It's really not something that the Legislature should be concerned with every Mrs. Smith in fourth grade in New Plymouth."

During my discussion with the reporter, I talked about both the ISEE uploads as well as the Career Ladder. The reporter's article's discussion went back and forth between the

ISEE uploads and the recently passed Career Ladder legislation. The reporter did not attribute the comments that I made regarding the teacher evaluation scores to the Career Ladder discussion as I had intended. My comments were not intended to dispute whether the legislature had the authority to require such reporting by statute. My comments indicated my belief that the mandatory reporting of teacher evaluation scores would not help student learning in Idaho, was not something the State should be concerned with and spending time and resources on, and in short, would be better off not being a part of the State's business.

22. When I read Mr. Corbin's article¹ in the Idaho Education News shortly after my discussion with him on the floor of the House in May 2015, I basically felt sick. I knew that he apparently heard me say that I had uploaded identical data for all teachers, but did not mention why, and misrepresented what I said about the other educators in our district. I have no way of knowing if it was intentional, or if he truly did not understand. At that point, there was nothing to do because that media outlet does not allow for clarifications.

23. Getting misrepresented by the media is a valuable lesson for new legislators, and since that time, when I speak with Mr. Corbin, I try to make sure that he has accurately heard what I intended to say. In May or June 2017, Mr. Corbin called regarding the Science Standards. I gave him my views, then spent approximately 10 minutes clarifying that he had heard correctly by asking "Clark, please tell me what you think I said to you." He would tell me, then I would do a little more clarifying until I was sure he understood

¹ <https://www.idahoednews.org/news/errors-uncovered-states-flawed-teacher-evaluation-report/>

what I was trying to communicate so as to ensure that I would not get misrepresented in the Idaho Education News. I obviously wish I had known the possibility of misrepresentation at that point in my career as a legislator in May 2015, and the technique of reviewing what was said that I now use with certain reporters.

24. 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 doing so, the problem of uploading non-finalized teacher evaluation scores to ISEE was eliminated.
25. During my tenure as a state legislator, I have served on the House Education Committee and worked on many education-related pieces of legislation. In doing so, I have taken positions on legislation and helped defeat or amend legislation in a way that I knew was not popular with various agencies of the state government. Taking such stances is part of my job as a representative of my constituents when we have concerns regarding proposed legislation.
26. During the 2016 Idaho legislative session, representatives of a certain state agency approached me regarding some legislation, and asked for my support. I refused because of several concerns I had regarding the proposed legislation.
27. In approximately August 2016, I was informed by an official in a state agency that the Professional Standards Commission was going to pursue an administrative complaint

against me. 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 their proposed legislation through the Idaho legislature and signed into law.

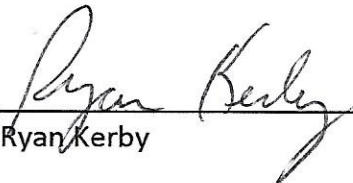
28. During the 2017 legislative session, I was chatting with this official, and asked him the name of the employee of the Idaho Board of Education that the official had mentioned before because I had forgotten. The official told me “Let’s leave it alone for now.”
29. In November 2016, over two years after I had any direct involvement with uploading teacher evaluation scores into the ISEE system, the Professional Standards Commission informed me that a complaint had been filed against me on October 19, 2016. As of the date of this affidavit, I still have not been provided the complaint or the identity of the complainant.
30. In March 2017, the Idaho legislature approved passed a new rule, effective for any evaluations done after July 1, 2017, which at least partially removed the requirement that 33% of teacher evaluations had to be based on student achievement. (see IDAPA 08.02.02.120, which is available at <https://adminrules.idaho.gov/rules/current/08/0202.pdf>). The requirement in the current version of IDAPA 08.02.02.120.03 does not have a 33% requirement, and merely requires that “[i]nstructional staff evaluation ratings must in part be based in part on measurable student achievement....” The 33% requirement in IDAPA 08.02.02.121.03, however, remains unchanged. Taking the 33% requirement out of IDAPA 08.02.02.120.03 but not out of IDAPA 08.02.02.121.03 was a mistake on the part of the Idaho Board of Education. If this mistake is left unaddressed, it will leave school districts

in a quandary, similar to the one that I faced with the May 2014 ISEE uploads. Unlike its response to the ISEE upload deadline issues in 2014 and 2015, however, the Idaho Board of Education has taken proactive steps in response to the confusion created by the rules on the 33% issue. Specifically, in August 2017, I was informed that the Idaho Board of Education was in the process of drafting a temporary rule to address this problem so that the school districts' obligations are clear.

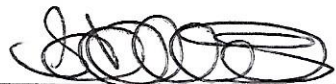
31. In July 2017, over three years after I had any direct involvement with uploading teacher evaluation scores into the ISEE system, the Professional Standards Commission filed an administrative complaint against me, alleging a violation of the code of ethics. As of the date of this affidavit, I still have not been provided the complaint, the identity of the complainant, or the investigative report.
32. Although it is my understanding that many other Idaho school superintendents engaged in very similar or identical conduct as my conduct, very few, possibly only three, were investigated by the Professional Standards Commission for this conduct, and even fewer had actual administrative complaints filed against them.
33. To the best of my knowledge, I 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 my conversations with two other superintendents, it appears to me 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. It is therefore my

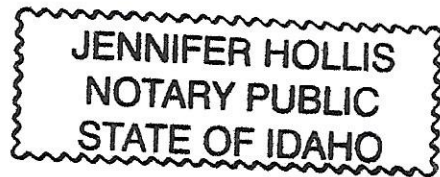
opinion that I was targeted with this investigation and administrative complaint for voicing disagreements and contrary opinions in the media.

DATED this 31st day of August, 2017.


Ryan Kerby

SUBSCRIBED AND SWORN to before me this 31st day of August, 2017.

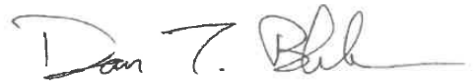

Notary Public
Residing in: Payette Id.
Commission expires: 12.10.21



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31th day of August, 2017, I caused a true a correct copy of the foregoing document to be served to the following:

<p>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</p>	<p><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</p>
<p>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</p>	<p><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</p>
<p>Mike Gilmore, Deputy Attorney General <i>Professional Standards Commission – Panel Attorney Advisor</i> Office of the Attorney General 700 W. Jefferson St. P.O. Box 83720 Boise, ID 83720-0010 mike.gilmore@ag.idaho.gov</p>	<p><input type="checkbox"/> Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Telecopy (FAX) <input checked="" type="checkbox"/> Email at: mike.gilmore@ag.idaho.gov</p>



Attorney