

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 406

BY EDUCATION COMMITTEE

AN ACT

1 RELATING TO EDUCATION; AMENDING SECTION 33-1209, IDAHO CODE, TO REVISE  
2 PROVISIONS RELATING TO INVESTIGATIONS BY THE PROFESSIONAL STANDARDS  
3 COMMISSION, TO REVISE PROVISIONS RELATING TO A SIGNED ALLEGATION, TO  
4 REVISE PROVISIONS RELATING TO NOTICE, TO REVISE PROVISIONS RELATING  
5 TO SERVICE, TO REVISE PROVISIONS RELATING TO A REQUEST FOR HEARING, TO  
6 REVISE PROVISIONS RELATING TO FINDINGS OF FACT AND A DECISION, AND TO  
7 PROVIDE FOR NOTICE OF CERTAIN FINAL DECISIONS; AND AMENDING SECTION  
8 33-1210, IDAHO CODE, TO REVISE PROVISIONS RELATING TO AN APPLICANT  
9 STATEMENT, TO PROVIDE A DEFINITION, TO REVISE PROVISIONS RELATING TO  
10 INFORMATION REQUESTED BY A HIRING DISTRICT FROM THE SUPERINTENDENT OF  
11 PUBLIC INSTRUCTION, TO REVISE PROVISIONS RELATING TO EMPLOYMENT OF AP-  
12 PPLICANTS ON A CONDITIONAL BASIS, TO ELIMINATE A REFERENCE TO COLLECTIVE  
13 BARGAINING AGREEMENTS AND INDIVIDUAL EMPLOYMENT CONTRACTS AND TO RE-  
14 VISE PROVISIONS RELATING TO THE EXPUNGEMENT OF CERTAIN INFORMATION.  
15

16 Be It Enacted by the Legislature of the State of Idaho:

17 SECTION 1. That Section 33-1209, Idaho Code, be, and the same is hereby  
18 amended to read as follows:

19 33-1209. PROCEEDINGS TO REVOKE, SUSPEND, DENY OR PLACE REASONABLE  
20 CONDITIONS ON A CERTIFICATE -- LETTERS OF REPRIMAND -- COMPLAINT -- SUBPOENA  
21 POWER -- HEARING. (1) The professional standards commission may conduct in-  
22 vestigations on any signed allegation of unethical practice or misconduct of  
23 any teacher brought by:

24 (a) An individual with a substantial interest in the matter, except a  
25 student in an Idaho public school; or

26 (b) A local board of trustees.

27 The allegation shall state the specific ground or grounds for the allegation  
28 of unethical conduct which could lead to a possible revocation, suspension,  
29 placing reasonable conditions on the certificate, or issuance of a letter of  
30 reprimand. Upon receipt of a written and signed allegation of ethical mis-  
31 conduct, the chief certification officer, in conjunction with the attorney  
32 general and the professional standards commission investigator, shall con-  
33 duct a review of the allegation using established guidelines to determine  
34 whether to remand the issue to the school district to be resolved locally  
35 or to open an investigation and forward the case to the professional stan-  
36 dards commission. Within fourteen (14) days of the decision to forward the  
37 case, the chief certification officer shall notify the complainant, and the  
38 teacher and the chief administrative officer of the employing public school,  
39 if any, in writing, that an investigation will be conducted and the teacher  
40 shall be afforded an opportunity to respond to the allegation verbally and in  
41 writing prior to the issuance of the complaint. The executive committee of  
42 the professional standards commission shall review the circumstances of the

1 forwarded case at one (1) of the two (2) next regularly scheduled meetings,  
2 and determine whether probable cause exists to warrant the filing of a com-  
3 plaint and the requesting of a hearing.

4 (2) Proceedings to revoke or suspend any certificate issued under sec-  
5 tion 33-1201, Idaho Code, or to issue a letter of reprimand or place reason-  
6 able conditions on the certificate shall be commenced by a written complaint  
7 against the holder thereof. Such complaint shall be made by the chief certi-  
8 fication officer stating the ground or grounds for issuing a letter of rep-  
9 rimand, placing reasonable conditions on the certificate, or for revocation  
10 or suspension and proposing that a letter of reprimand be issued, reason-  
11 able conditions be placed on the certificate, or the certificate be revoked  
12 or suspended. A copy of the complaint shall be served upon the certificate  
13 holder, either by personal service or by certified mail, within thirty (30)  
14 days of determination by the executive committee or such other time agreed  
15 to by the teacher and the chief certification officer. A copy shall also be  
16 served upon the chief administrative officer of the public school employing  
17 the certificate holder, if any.

18 (3) Not more than thirty (30) days after the date of service of any  
19 complaint, the person complained against may request, in writing, a hearing  
20 upon the complaint. Any such request shall be made and addressed to the  
21 state superintendent of public instruction with a copy to be provided to the  
22 chief administrative officer of the public school employing the certificate  
23 holder, if any; and if no request for hearing is made, the grounds for sus-  
24 pension, revocation, placing reasonable conditions on the certificate, or  
25 issuing a letter of reprimand stated in the complaint shall be deemed admit-  
26 ted. Upon a request for hearing, the chief certification officer shall give  
27 notice, in writing, to the person requesting the hearing, which notice shall  
28 state the time and place of the hearing and which shall occur not more than  
29 ninety (90) days from the request for hearing or such other time agreed to by  
30 the teacher and the chief certification officer. A copy of this notice shall  
31 also be provided to the chief administrative officer of the public school  
32 employing the certificate holder, if any. The time of such hearing shall not  
33 be less than five (5) days from the date of notice thereof. Any such hearing  
34 shall be informal and shall conform with chapter 52, title 67, Idaho Code.  
35 The hearing will be held within the school district in which any teacher com-  
36 plained of shall teach, or at such other place deemed most convenient for all  
37 parties.

38 (4) Any such hearing shall be conducted by three (3) or more panel mem-  
39 bers appointed by the chairman of the professional standards commission, a  
40 majority of whom shall hold a position of employment the same as the person  
41 complained against. One (1) of the panel members shall serve as the panel  
42 chair. The panel chair shall be selected by the chairman of the professional  
43 standards commission from a list of former members of the professional stan-  
44 dards commission who shall be instructed in conducting administrative hear-  
45 ings. No commission member who participated in the probable cause determi-  
46 nation process in a given case shall serve on the hearing panel. All hear-  
47 ings shall be held with the object of ascertaining the truth. Any person com-  
48 plained against may appear in person and may be represented by legal counsel,  
49 and may produce, examine and cross-examine witnesses, and, if he chooses to  
50 do so, may submit for the consideration of the hearing panel a statement, in

1 writing, in lieu of oral testimony, but any such statement shall be under  
2 oath and the affiant shall be subject to cross-examination.

3 (5) The state superintendent of public instruction, as authorized by  
4 the state board of education, has the power to issue subpoenas and compel  
5 the attendance of witnesses and compel the production of pertinent papers,  
6 books, documents, records, accounts and testimony. The state board or its  
7 authorized representative may, if a witness refuses to attend or testify or  
8 to produce any papers required by such subpoena, report to the district court  
9 in and for the county in which the proceeding is pending, by petition, set-  
10 ting forth that a due notice has been given of the time and place of atten-  
11 dance of the witnesses, or the production of the papers, that the witness has  
12 been properly summoned, and that the witness has failed and refused to at-  
13 tend or produce the papers required by this subpoena before the board, or its  
14 representative, or has refused to answer questions propounded to him in the  
15 course of the proceedings, and ask for an order of the court compelling the  
16 witness to attend and testify and produce the papers before the board. The  
17 court, upon the petition of the board, shall enter an order directing the  
18 witness to appear before the court at a time and place to be fixed by the court  
19 in the order, the time to be not more than ten (10) days from the date of the  
20 order, and then and there shall show cause why he has not attended and testi-  
21 fied or produced the papers before the board or its representative. A copy of  
22 the order shall be served upon the witness. If it shall appear to the court  
23 that the subpoena was regularly issued by the board and regularly served, the  
24 court shall thereupon order that the witness appear before the board at the  
25 time and place fixed in the order and testify or produce the required papers.  
26 Upon failure to obey the order, the witness shall be dealt with for contempt  
27 of court. The subpoenas shall be served and witness fees and mileage paid as  
28 allowed in civil cases in the district courts of this state.

29 (6) Within twenty-one (21) days of the conclusion of any hearing  
30 dealing with the revocation, suspension, denial of a certificate, placing  
31 reasonable conditions on the certificate, or issuing a letter of reprimand,  
32 the hearing panel shall submit to the chief certification officer, ~~and~~ to  
33 the person complained against and to the chief administrative officer of the  
34 public school employing the certificate holder, if any, a concise statement  
35 of the proceedings, a summary of the testimony, and any documentary evidence  
36 offered, together with the findings of fact and a decision. The hearing  
37 panel may determine to suspend or revoke the certificate, or the panel may  
38 order that reasonable conditions be placed on the certificate or a letter of  
39 reprimand be sent to the certificate holder, or if there are not sufficient  
40 grounds, the allegation against the certificate holder is dismissed and is  
41 so recorded.

42 (7) Within three (3) days of issuance, the hearing panel's decision  
43 shall be made a permanent part of the record of the certificate holder.  
44 Should the final decision be to place reasonable conditions upon the cer-  
45 tificate holder or a suspension or revocation of the teaching certificate,  
46 the professional standards commission must notify the employing public  
47 school of the hearing panel's decision and provide notice that such may nega-  
48 tively impact the employment status of the certificated employee.

49 (8) The final decision of the hearing panel shall be subject to judicial  
50 review in accordance with the provisions of chapter 52, title 67, Idaho Code,

1 in the district court of the county in which the holder of a revoked certifi-  
2 cate has been last employed as a teacher.

3 (9) Whenever any certificate has been revoked, suspended or has had  
4 reasonable conditions placed upon it, or an application has been denied, the  
5 professional standards commission may, upon a clear showing that the cause  
6 constituting grounds for the listed actions no longer exists, issue a valid  
7 certificate. Provided however, that no certificate shall be issued to any  
8 person who has been convicted of any crime listed in subsection 2. of section  
9 33-1208, Idaho Code.

10 (10) For any person certified in another state and applying for certifi-  
11 cation in Idaho, and for any person previously certified in this state who is  
12 applying for certification in the event their certification has lapsed or is  
13 seeking renewal of a current certification, the chief certification officer  
14 shall deny an application for a new certificate or for a renewal of a cer-  
15 tificate, regardless of the jurisdiction where such certificate was issued,  
16 if there are any unsatisfied conditions on such current or previously is-  
17 sued certificate or if there is any form of pending investigation by a state  
18 agency concerning the applicant's teaching license or certificate. Pro-  
19 vided however, the chief certification officer shall not automatically deny  
20 the application if such person authorized in writing that the chief certi-  
21 fication officer and the professional standards commission shall have full  
22 access to the investigative files concerning the conditions on, or investi-  
23 gation concerning, such certificate in Idaho or any other state or province.  
24 Upon review of the information authorized for release by the applicant, the  
25 chief certification officer shall either grant or deny such application or,  
26 upon denial and upon written request made by the applicant within thirty  
27 (30) days of such denial, shall afford the applicant with the procedures set  
28 forth in subsections (3) through (9) of this section. If the applicant does  
29 not execute the written authorization discussed herein, reapplication may  
30 be made once all investigations have been completed and all conditions have  
31 been satisfied, resulting in a clear certificate from the issuing state or  
32 province.

33 (11) For the purposes of this section, the term "teacher" shall include  
34 any individual required to hold a certificate pursuant to section 33-1201,  
35 Idaho Code.

36 SECTION 2. That Section 33-1210, Idaho Code, be, and the same is hereby  
37 amended to read as follows:

38 33-1210. INFORMATION ON PAST JOB PERFORMANCE. (1) As used in this sec-  
39 tion:

40 (a) "Applicant" means an applicant for employment in a certificated or  
41 noncertificated position who is currently or was previously employed by  
42 a school district.

43 (b) "Employer" means a school district employer.

44 (2) Before hiring an applicant, a school district shall request the ap-  
45 plicant to sign a statement:

46 (a) Authorizing the applicant's current and past employers, including  
47 employers outside of the state of Idaho, to release to the hiring school  
48 district all information relating to the job performance and/or job re-  
49 lated conduct, if any, of the applicant and making available to the hir-

1 ing school district copies of all documents in the previous employer's  
2 personnel, investigative or other files, regardless of whether or not  
3 the employee has notice of the existence of such documentation, relat-  
4 ing to the job performance by the applicant; and

5 (b) Releasing the applicant's current and past employers, and employ-  
6 ees acting on behalf of that employer, from any liability for providing  
7 information described in paragraph (a) of this subsection, as provided  
8 in subsection (4) of this section.

9 For purposes of paragraph (a) of this subsection, documentation related  
10 to the job performance or job related conduct of any employee or appli-  
11 cant is defined as and can be limited by the producing district to include:  
12 all annual evaluations, letters of reprimand, letters of direction, let-  
13 ters of commendation or award, disciplinary actions and documentation of  
14 disciplinary investigations, recommendations for probation, notices of  
15 probation, notices of removal from probation, recommendations for termina-  
16 tion or nonrenewal, notices of termination or nonrenewal, notices from the  
17 professional standards commission of Idaho or any other such similar state  
18 agency of action taken against an individual's certificate. Names of any  
19 student or fellow employee complainant, other than the employee's adminis-  
20 trative evaluator or administrative author of communication to the employee  
21 shall be redacted from such provided documentation.

22 (3) Before hiring an applicant, a school district shall request in  
23 writing, electronic or otherwise, the applicant's current and past employ-  
24 ers, including out-of-state employers, to provide the information described  
25 in subsection (2) (a) of this section, if any. The request shall include a  
26 copy of the statement signed by the applicant under subsection (2) of this  
27 section.

28 (4) Not later than twenty (20) business days after receiving a request  
29 under subsection (3) of this section, a school district within Idaho shall  
30 provide the information requested and make available to the requesting  
31 school district copies of all documents in the applicant's personnel record  
32 relating to job performance. The school district, or an employee acting on  
33 behalf of the school district, who in good faith discloses information under  
34 this section either in writing, printed material, electronic material or  
35 orally is immune from civil liability for the disclosure. An employer is  
36 presumed to be acting in good faith at the time of the disclosure under this  
37 section unless the evidence establishes one (1) or more of the following:  
38 (a) that the employer knew the information disclosed was false or mislead-  
39 ing; (b) that the employer disclosed the information with reckless disregard  
40 for the truth; (c) that the disclosure was specifically prohibited by a state  
41 or federal statute.

42 (5) A hiring district shall request from the office of the superinten-  
43 dent of public instruction verification of certification status, any past or  
44 pending violations of the professional code of ethics, any detail as to any  
45 prior or pending conditions placed upon a certificate holder's certificate,  
46 any prior or pending revocation, suspension or the existence of any prior  
47 letters of reprimand and information relating to job performance as estab-  
48 lished by the provisions of subsection (11) of this section, if any, for ap-  
49 plicants for certificated employment.

1 (6) A school district shall not hire an applicant who does not sign the  
2 statement described in subsection (2) of this section.

3 (7) School districts may employ applicants on a conditional basis pend-  
4 ing the district's review of information obtained under this section; how-  
5 ever, such employees shall not be issued a standard teacher contract in any  
6 form and shall not have any due process obligations or rights to their posi-  
7 tion until such time as the information requested has been obtained and an  
8 employment decision made by the district subsequent to review of the infor-  
9 mation. Once the prior employer personnel performance materials have ar-  
10 rived for an individual conditionally hired, the district will have a period  
11 of thirty (30) days to review the materials and make a decision relating to  
12 the employment of the individual. If the individual is going to be retained  
13 and is a certificated employee, it is at that time that a standard teacher's  
14 contract may be issued. When requests are sent to out-of-state employers un-  
15 der subsection (3) of this section, an applicant who has signed the statement  
16 described in subsection (2) of this section shall not be prevented from gain-  
17 ing employment in Idaho public schools if the laws or policies of that other  
18 state prevent documents from being made available to Idaho school districts  
19 or if the out-of-state school district fails or refuses to cooperate with the  
20 request.

21 (8) Information received pursuant to this section shall be used by a  
22 school district only for the purpose of evaluating an applicant's qualifica-  
23 tions for employment in the position for which he or she has applied. Except  
24 as otherwise provided by law, a board member or employee of a school district  
25 shall not disclose the information to any person, other than the applicant,  
26 who is not directly involved in the process of evaluating the applicant's  
27 qualifications for employment. A person who violates the provisions of this  
28 subsection may be civilly liable for damages caused by such violation.

29 (9) Beginning September 1, 2011, the board or an official of a school  
30 district shall not enter into any collective bargaining agreement, individ-  
31 ual employment contract, resignation agreement, severance agreement, or any  
32 other contract or agreement that has the effect of suppressing information  
33 about negative job performance by a present or former employee or of expung-  
34 ing information about that performance or misconduct from any documents in  
35 the previous employer's personnel, investigative or other files relating to  
36 job performance by the applicant. Any provision of a contract or agreement  
37 that is contrary to this subsection is void and unenforceable. This subsec-  
38 tion does not restrict the expungement from a personnel file of information  
39 about alleged verbal or physical abuse or sexual misconduct that has not been  
40 substantiated been proven to be a false allegation or untruthful.

41 (10) This section does not prevent a school district from requesting or  
42 requiring an applicant to provide information other than that described in  
43 this section.

44 (11) By September 1, 2011, the state board of education has the author-  
45 ity to and shall adopt rules defining job standards performance and "verbal  
46 abuse," "physical abuse" and "sexual misconduct" as used in this section for  
47 application to all certificated and noncertificated employees. The defi-  
48 nitions of job standards performance, verbal and physical abuse and sexual  
49 misconduct adopted by the state board of education must include the require-  
50 ment that the school district has made a determination that there is suffi-

1     cient information to conclude that the abuse or misconduct occurred and that  
2     the abuse or misconduct resulted in the employee's leaving his or her posi-  
3     tion at the school district.