

MINUTES
SENATE EDUCATION COMMITTEE

DATE: Wednesday, February 15, 2012

TIME: 3:00 P.M.

PLACE: Room WW55

MEMBERS PRESENT: Chairman Goedde, Vice Chairman Mortimer, Senators Andreason, Pearce, Fulcher, Winder, Toryanski, Malepeai, and LeFavour

**ABSENT/
EXCUSED:**

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENE: **Chairman Goedde** called the committee to order and asked the Secretary to take a silent roll. **Chairman Goedde** reordered the agenda to begin with confirmations, then minutes, followed by Senate Bill 1297.

CONFIRMATIONS: **Chairman Goedde** stated that in voting on confirmations for Charter School Commission, there are some names noted as presenters. If successful in moving these forward, **Mr. Chairman** would like to carry the two from North Idaho on the floor, and assumed **Senator Malepeai** would like to carry **Ms. Van Wart** on the floor. **Chairman Goedde** stated there were three positions before the committee and discussion had occurred the week prior. Since that time **Wanda Quinn's** position on the Coeur d' Alene school board was challenged, a judge found her appointment was not correct through no fault of her own. It was determined **Ms. Quinn** continued to be eligible for this position because she was a former trustee. The Chair stated he would entertain a motion. **Senator Winder** moved, seconded by **Senator Andreason** to send the confirmations of **Brad Corkill, Wanda Quinn and Esther Van Wart** to the floor for confirmation. The motion carried by **voice vote**.

MINUTES: **Senator Fulcher** moved, seconded by **Vice Chairman Mortimer**, to approve the minutes of January 17, 2012. The motion carried by **voice vote**.

Vice Chairman Mortimer moved, seconded by **Senator Fulcher**, to approve the minutes of January 18 and January 25, 2012. The motion carried by **voice vote**.

Senator Winder moved, seconded by **Senator Fulcher**, to approve the minutes of February 1, 2012. The motion carried by **voice vote**.

S 1297 **Chairman Goedde** welcomed **Senator Smyser** to the committee to present **S 1297**.

Senator Smyser thanked the committee and yielded her time to **Karen Echeverria**, Executive Director, of the Idaho School Boards Association (ISBA).

Ms. Echeverria said she was at the committee representing the members of ISBA. She said the ISBA supports **S 1297**. The purpose of the legislation is to bring grievances for non certificated or classified personnel more in line with certificated personnel and put the decision making authority with the elected trustees where they believe it belongs. Last year with the passage of Senate Bill 1108 of the Students Come First package grievance procedures for certificated personnel were changed. Procedures for non certificated personnel were not amended. Under the existing statute, non-certificated personnel who are non contract, at-will employees have more statutory grievance rights than do certificated staff and administrative personnel.

There are three major amendments in this bill. The first change clarifies under what circumstances a non-certificated employee can file grievances. They are seeking to amend the statute so a grievance can only be filed if the Board of Trustees have violated their own school district policy. It is further clarified by saying the transfer, placement, evaluation or termination of employment shall not be grounds to file grievance.

Amendments also clarify timelines for filing a grievance and the manner in which it must be filed. In addition this legislation will allow for an appeal of the grievance to the Superintendent, then to a hearing panel. **Ms. Echeverria** noted that this legislation, by allowing for a hearing panel, still allows for one additional step that is not afforded certificated personnel.

The bill also deals with the grievance hearing itself. This legislation keeps in place the requirement for a hearing panel, clarifies that the hearing panel decision is an advisory opinion for the Board's consideration. ISBA firmly believes the final decision should be left with the Board of Trustees, who are elected to govern the school district.

QUESTIONS:

Vice Chairman Mortimer asked about the six day filing period and the employee evaluations. **Ms. Echeverria** explained the process of evaluation disagreement and clarified the six day time period was for filing a grievance.

Senator Toryanski asked about non-certificated employee disagreements with performance evaluations and any limits on grievances that could be brought. **Ms. Echeverria** explained that performance evaluation disagreements are subject to Board policy, and there are no set limits on grievances that can be brought, and they can make appeals on actionable causes.

Senator Malepeai asked about school district hiring practices, and policies and procedures. **Ms. Echeverria** stated each Board sets its own, and that policies are available from ISBA.

TESTIMONY:

Tawni Berryman Hull, Education Support Professionals (ESP) Joint School District No. 2, said because of a payroll issue she faced in her district, under this bill she would have had no recourse, because her six days would have been used trying to work the issue out before filing a grievance. She worked with the ISBA, IEA and NEA to satisfactorily solve the issues. The six day filing period of this bill would have prevented the ability to solve the problem without filing a grievance or going to court.

Barbara Leeds, Human Resources Director, Joint School District #2, represents Meridian School District and Board of Trustees and they support this legislation.

Bruce Gestrin, Assistant Superintendent of Joint School District #2, does not believe problems with paychecks are a grievance. The new language would still spell out due process rights. If the issue could not be solved at the administrative supervisory level, this legislation would get it to the Board of Trustees in an expedient fashion.

Sonya Packard, Meridian School District, ESP Staff, shared a story about a poor evaluation, which is not a grievance in the legislation. She opposes S 1297.

Rob Winslow, Executive Director of Idaho Association of School Administrators, supports this legislation. He said revising grievance procedures, clarifying the definitions for Boards and providing hearing panel for non-certificated personnel is a good addition.

Teresa Miller, ESP Joint School District No. 2, had an issue with an error in her paycheck and did not get paid due to human error; it took two months to resolve. With this new bill which has the six day limit there is no good recourse. She is not in support of the bill.

Paul Stark, General Counsel, Idaho Education Association (IEA). The IEA opposes the bill. Classified employees are often in positions of choosing between what might be justice and their job. He submitted written testimony from those who were not able to attend; and were not in support of the bill. He said he does not see necessity of this bill because the current law seems to be working. The bill itself is confusing as written, as it has conflicting provisions where grievances can only be brought for specific violations of board policy or for any matter related to employment. There is a draconian part in the bill which allows only for a six day limit and is potentially unconstitutional. The "subject matter of grievance" prerequisites are too broad and employees would be forced to file potential grievances simply to preserve their rights. At-will employment allows termination for any lawful reason. With a six day requirement, the employee would not be allowed to file a grievance if they did not make it in the six day time frame. Regarding this statute, there have only been four court cases reported in the 23 years it has been in place: The last one was 12 years ago. Finally, this bill conflicts with existing state law. In the Human Rights Act there are 365 days to file a grievance and other laws allow up to two years to file.

Marty Meyer, Coeur d'Alene, a former classified district employee has concerns with **S 1297**. The scope of issues that may be aggrieved, particularly placement and evaluation, are problematic. Districts may not be held accountable for evaluations based on job descriptions. When this results in a poor evaluation, there is no recourse. Personally, he has filed two grievances in 22 years; one for concern of health and safety for children and the other for personal liability. Both times these were associated with assignments outside his job description. Both times his concerns were ignored by his supervisors. Grievances usually aren't the first line of defense employees look to in an issue. Unfair treatment can be vague, because unfair treatment comes in a variety of forms. Idaho Code 33-517 is a problem solving statute and it works well when applied. However that statute is under used because classified employees still feel intimidated. S 1297 further muzzles classified employees. He is not in support of the bill.

Kathryn Packard, ESP of Joint School District No. 2, worked for the district for 14 years. After 13 years of excellent reviews she received an unfair evaluation. Her supervisor never said anything to her before evaluation and she felt that she had been singled out and is not in support of the bill.

All supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see Attachment #1, #2, and #3).

QUESTIONS:

Senator LeFavour asked **Ms. Leeds** if claims without merit have been put through the process? And if all complaints represent violations of written board approved district policy? **Ms. Leeds** said in the past two years seven grievances have been filed, four are currently in the process. There have been instances where staff was unduly dismissed and they were placed back into their positions because due process was not in place. She could not speak to every Board's policy.

Vice Chairman Mortimer asked about the described pay issues. Did the employees have a right to file under work law without going through grievance process. **Mr. Gestrin** indicated that under the Fair Labor Standards Act it would not have needed to go through the grievance process. He also indicated that issue was a software problem, not a matter of intentional underpayment.

Chairman Goedde asked if six days was an adequate amount of time to file a grievance. **Mr. Gestrin** indicated six days gave a sense of expediency.

Senator Toryanski asked **Ms. Packard** if she filed a grievance related to her evaluation. **Ms. Packard** stated she filed a rebuttal, but if she had lost her job, she wouldn't have had the opportunity for explanation. She also indicated that line 25 of the bill indicates evaluations are something employees would not be able to file a grievance on; had she been terminated she would have no chance for explanation. It would only allow for the rebuttal of evaluation to be placed in her file.

Senator Andreason asked for **Ms. Packard's** suggestions on the bill. **Ms. Packard** stated it should not have a six day time limit, and that grievances should be allowed for evaluations that can be used against you.

Chairman Goedde asked **Mr. Winslow** if six days is realistic, or if it created problems. **Mr. Winslow** stated that six days was not new, and seemed adequate and expedient. He explained the new language simply clarified that if a grievance is not filed within the six days, it cannot move forward.

Senator LeFavour asked if there were instances of employees being improperly transferred, evaluated, etc. **Mr. Winslow** stated that he was unaware of any incidents, but imagined they could occur. He also referenced the processes in place, such as attaching a rebuttal to an evaluation.

Senator Winder asked **Mr. Stark** if employees give up the right to appeal or to judicial procedures when would the six day period apply. **Mr. Stark** stated that the time line is six days from the incident giving rise to the grievance, there is no discovery rule indicated, and that under state law the filing of a grievance is a prerequisite to filing any appeals.

MOTION:

Chairman Goedde stated that there were enough questions regarding the constitutionality of the legislation that without dissent, he would like to hold S 1297 in committee to obtain an opinion from the Attorney General. When the Chairman receives the opinion from the Attorney General, he would allow for **Ms. Echeverria** to close debate.

ADJOURN:

Chairman Goedde adjourned the meeting at 4:35 P.M.

Senator Goedde
Chairman

LeAnn South
Secretary