

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 165

BY EDUCATION COMMITTEE

AN ACT

1 RELATING TO EDUCATION AND CONTRACTS; AMENDING SECTION 33-514, IDAHO CODE, TO
2 PROVIDE THAT NO PROBATIONARY PERIOD SHALL BE REQUIRED IN CERTAIN CIR-
3 CUMSTANCES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 33-515,
4 IDAHO CODE, TO PROVIDE THAT NO PROBATIONARY PERIOD SHALL BE REQUIRED
5 IN CERTAIN CIRCUMSTANCES, TO MAKE A CODIFIER'S CORRECTION AND TO MAKE
6 TECHNICAL CORRECTIONS; AMENDING CHAPTER 5, TITLE 33, IDAHO CODE, BY THE
7 ADDITION OF A NEW SECTION 33-522A, IDAHO CODE, TO ESTABLISH PROVISIONS
8 RELATING TO REDUCTIONS IN FORCE, TO ESTABLISH PROVISIONS THAT A BOARD
9 OF TRUSTEES MAY NEED TO REDUCE, REORGANIZE, CONSOLIDATE OR OTHERWISE
10 TAKE ACTION RELATING TO THE NUMBER OF CERTAIN POSITIONS, TO ESTABLISH
11 PROVISIONS RELATING TO INSTITUTING A REDUCTION IN FORCE, TO ESTABLISH
12 PROVISIONS RELATING TO AN INDIVIDUAL EMPLOYED PURSUANT TO A RENEWABLE
13 STATUS CONTRACT, TO ESTABLISH PROVISIONS RELATING TO AN INDIVIDUAL
14 EMPLOYED PURSUANT TO A CATEGORY 3 CONTRACT, TO PROVIDE FOR WRITTEN NO-
15 TICE IN CERTAIN CIRCUMSTANCES, TO ESTABLISH PROVISIONS RELATING TO THE
16 PROCESS AND PROCEDURE FOR A SINGLE INFORMAL REVIEW AND TO ESTABLISH
17 PROVISIONS RELATING TO THE IMPLEMENTATION OF A REDUCTION IN FORCE AND
18 INFORMAL REVIEW AND INDIVIDUALIZED OR GROUP DUE PROCESS BEFORE THE
19 BOARD OF TRUSTEES; PROVIDING SEVERABILITY; AND DECLARING AN EMERGENCY.
20

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

22 SECTION 1. That Section 33-514, Idaho Code, be, and the same is hereby
23 amended to read as follows:

24 33-514. ISSUANCE OF ANNUAL CONTRACTS -- SUPPORT PROGRAMS -- CATE-
25 GORIES OF CONTRACTS -- OPTIONAL PLACEMENT. (1) The board of trustees shall
26 establish criteria and procedures for the supervision and evaluation of
27 certificated employees who are not employed on a renewable contract, as pro-
28 vided for in section 33-515, Idaho Code.

29 (2) There shall be three (3) categories of annual contracts available
30 to local school districts under which to employ certificated personnel:

31 (a) A category 1 contract is a limited one-year contract as provided in
32 section 33-514A, Idaho Code.

33 (b) A category 2 contract is for certificated personnel in the first and
34 second years of continuous employment with the same school district.
35 Upon the decision by a local school board not to reemploy the person for
36 the following year, the certificated employee shall be provided a writ-
37 ten statement of reasons for non-reemployment by no later than May 25.
38 No property rights shall attach to a category 2 contract and therefore
39 the employee shall not be entitled to a review by the local board of the
40 reasons or decision not to reemploy.

41 (c) A category 3 contract is for certificated personnel during the
42 third year of continuous employment by the same school district. Dis-

1 strict procedures shall require at least one (1) evaluation prior to the
 2 beginning of the second semester of the school year and the results of
 3 any such evaluation shall be made a matter of record in the employee's
 4 personnel file. When any such employee's work is found to be unsatis-
 5 factory a defined period of probation shall be established by the board,
 6 but in no case shall a probationary period be less than eight (8) weeks.
 7 After the probationary period, action shall be taken by the board as
 8 to whether the employee is to be retained, immediately discharged,
 9 discharged upon termination of the current contract or reemployed at
 10 the end of the contract term under a continued probationary status.
 11 Notwithstanding the provisions of sections 67-2344 and 67-2345, Idaho
 12 Code, a decision to place certificated personnel on probationary status
 13 may be made in executive session and the employee shall not be named in
 14 the minutes of the meeting. A record of the decision shall be placed
 15 in the employee's personnel file. This procedure shall not preclude
 16 recognition of unsatisfactory work at a subsequent evaluation and the
 17 establishment of a reasonable period of probation. In all instances,
 18 the employee shall be duly notified in writing of the areas of work which
 19 are deficient, including the conditions of probation. Each such cer-
 20 tificated employee on a category 3 contract shall be given notice, in
 21 writing, whether he or she will be reemployed for the next ensuing year.
 22 Such notice shall be given by the board of trustees no later than the
 23 twenty-fifth day of May of each such year. If the board of trustees has
 24 decided not to reemploy the certificated employee, then the notice must
 25 contain a statement of reasons for such decision and the employee shall,
 26 upon request, be given the opportunity for an informal review of such
 27 decision by the board of trustees. The parameters of an informal review
 28 shall be determined by the local board.

29 Notwithstanding the provisions of this paragraph, no probationary pe-
 30 riod shall be required for any category 3 employee who is subjected to a
 31 reduction in force for the next ensuing school year.

32 (3) School districts hiring an employee who has been on renewable con-
 33 tract status with another Idaho district, or has out-of-state experience
 34 which would otherwise qualify the certificated employee for renewable con-
 35 tract status in Idaho, shall have the option to immediately grant renewable
 36 contract status, or to place the employee on a category 3 annual contract.
 37 Such employment on a category 3 contract under the provisions of this subsec-
 38 tion may be for one (1), two (2) or three (3) years.

39 (4) There shall be a minimum of two (2) written evaluations in each of
 40 the annual contract years of employment, and at least one (1) evaluation
 41 shall be completed before January 1 of each year. The provisions of this
 42 subsection ~~(4)~~ shall not apply to employees on a category 1 contract.

43 SECTION 2. That Section 33-515, Idaho Code, be, and the same is hereby
 44 amended to read as follows:

45 33-515. ISSUANCE OF RENEWABLE CONTRACTS. (1) During the third full
 46 year of continuous employment by the same school district, including any
 47 specially chartered district, each certificated employee named in subsec-
 48 tion (16) of section 33-1001, Idaho Code, and each school nurse and school
 49 librarian shall be evaluated for a renewable contract and shall, upon having

1 been offered a contract for the next ensuing year, having given notice of
2 acceptance of renewal and upon signing a contract for a fourth full year, be
3 placed on a renewable contract status with said school district subject to
4 the provisions included in this chapter.

5 (2) After the third full year of employment and at least once annu-
6 ally, the performance of each such certificated employee, school nurse, or
7 school librarian shall be evaluated according to criteria and procedures
8 established by the board of trustees in accordance with general guidelines
9 approved by the state board of education. Except as otherwise provided, that
10 person shall have the right to automatic renewal of contract by giving no-
11 tice, in writing, of acceptance of renewal. Such notice shall be given to the
12 board of trustees of the school district then employing such person not later
13 than the first day of June preceding the expiration of the term of the cur-
14 rent contract. Except as otherwise provided by this paragraph subsection,
15 the board of trustees shall notify each person entitled to be employed on
16 a renewable contract of the requirement that such person must give the no-
17 tice hereinabove and that failure to do so may be interpreted by the board
18 as a declination of the right to automatic renewal or the offer of another
19 contract. Such notification shall be made, in writing, not later than the
20 fifteenth day of May, in each year, except to those persons to whom the board,
21 prior to said date, has sent proposed contracts for the next ensuing year, or
22 to whom the board has given the notice required by this section.

23 (3) Any contract automatically renewed under the provisions of this
24 section shall be for the same length as the term stated in the current con-
25 tract and at a salary no lower than that specified therein, to which shall
26 be added such increments as may be determined by the statutory or regulatory
27 rights of such employee by reason of training, service, or performance, ex-
28 cept where a board of trustees has declared a financial emergency pursuant
29 to section 33-522, Idaho Code.

30 (4) Nothing in this section shall prevent the board of trustees from of-
31 fering a renewed contract increasing the salary of any certificated person,
32 or from reassigning an administrative employee to a nonadministrative posi-
33 tion with appropriate reduction of salary from the preexisting salary level.
34 In the event the board of trustees reassigns an administrative employee to a
35 nonadministrative position, the board shall give written notice to the em-
36 ployee which contains a statement of the reasons for the reassignment. The
37 employee, upon written request to the board, shall be entitled to an informal
38 review of that decision. The process and procedure for the informal review
39 shall be determined by the local board of trustees.

40 (5) Before a board of trustees can determine not to renew for reasons of
41 an unsatisfactory report of the performance of any certificated person whose
42 contract would otherwise be automatically renewed, or to renew the contract
43 of any such person at a reduced salary, such person shall be entitled to a
44 reasonable period of probation. This period of probation shall be preceded
45 by a written notice from the board of trustees with reasons for such pro-
46 bationary period and with provisions for adequate supervision and evalua-
47 tion of the person's performance during the probationary period. Such pe-
48 riod of probation shall not affect the person's renewable contract status.
49 Consideration of probationary status for certificated personnel is consid-
50 eration of the status of an employee within the meaning of section 67-2345,

1 Idaho Code, and may be held in executive session. If the consideration re-
2 sults in probationary status, the individual on probation shall not be named
3 in the minutes of the meeting. A record of the decision shall be placed in the
4 teacher's personnel file.

5 Notwithstanding the provisions of this subsection, no probationary period
6 shall be required for any renewable contract status employee who is sub-
7 jected to a reduction in force for the next ensuing school year.

8 (6) Except in the situation of a reduction in force for the ensuing
9 contract year, iIf the board of trustees takes action to immediately dis-
10 charge or discharge upon termination of the current contract a certificated
11 person whose contract would otherwise be automatically renewed, or to renew
12 the contract of any such person at a reduced salary, the action of the board
13 shall be consistent with the procedures specified in section 33-513(5),
14 Idaho Code, and furthermore, the board shall notify the employee in writing
15 whether there is just and reasonable cause not to renew the contract or to
16 reduce the salary of the affected employee, and if so, what reasons it relied
17 upon in that determination.

18 (7) If the board of trustees takes action after the declaration of a fi-
19 nancial emergency pursuant to section 33-522, Idaho Code, and such action is
20 directed at more than one (1) certificated employee and, if mutually agreed
21 to by both parties, a single informal review shall be conducted. Without
22 mutual consent of both parties, the board of trustees shall use the follow-
23 ing procedure to conduct a single due process hearing within sixty-seven
24 (67) days of the declaration of financial emergency pursuant to section
25 33-522(2), Idaho Code, or on or before June 22, whichever shall occur first:

26 (a) The superintendent or any other duly authorized administrative of-
27 ficer of the school district may recommend the change in the length of
28 the term stated in the current contract or reduce the salary of any cer-
29 tificated employee by filing with the board of trustees written notice
30 specifying the purported reasons for such changes.

31 (b) Upon receipt of such notice, the board of trustees, acting through
32 its duly authorized administrative official, shall give the affected
33 employees written notice of the reductions and the recommendation of
34 the change in the length of the term stated in the current contract or
35 the reduction of salary, along with written notice of a hearing be-
36 fore the board of trustees prior to any determination by the board of
37 trustees.

38 (c) The hearing shall be scheduled to take place not less than six (6)
39 days nor more than fourteen (14) days after receipt of the notice by the
40 employees. The date provided for the hearing may be changed by mutual
41 consent.

42 (d) The hearing shall be open to the public.

43 (e) All testimony at the hearing shall be given under oath or affirma-
44 tion. Any member of the board, or the clerk of the board of trustees, may
45 administer oaths to witnesses or affirmations by witnesses.

46 (f) The employees may be represented by legal counsel and/or by a repre-
47 sentative of a local or state education association.

48 (g) The chairman of the board of trustees or the designee of the chair-
49 man shall conduct the hearing.

1 (h) The board of trustees shall cause an electronic record of the hear-
 2 ing to be made or shall employ a competent reporter to take stenographic
 3 or stenotype notes of all the testimony at the hearing. A transcript of
 4 the hearing shall be provided at cost by the board of trustees upon re-
 5 quest of the employee.

6 (i) At the hearing the superintendent or other duly authorized admin-
 7 istrative officer shall present evidence to substantiate the reduction
 8 contained in such notice.

9 (j) The employees may produce evidence to refute the reduction. Any
 10 witness presented by the superintendent or by the employees shall be
 11 subject to cross-examination. The board of trustees may also examine
 12 witnesses and be represented by counsel.

13 (k) The affected employees may file written briefs and arguments with
 14 the board of trustees within three (3) days after the close of the hear-
 15 ing or such other time as may be agreed upon by the affected employees
 16 and the board of trustees.

17 (l) Within seven (7) days following the close of the hearing, the board
 18 of trustees shall determine and, acting through its duly authorized ad-
 19 ministrative official, shall notify the employees in writing whether
 20 the evidence presented at the hearing established the need for the ac-
 21 tion taken.

22 The due process hearing pursuant to this subsection ~~(7)~~ shall not be required
 23 if the board of trustees and the local education association reach an agree-
 24 ment on issues agreed upon pursuant to section 33-522(3), Idaho Code.

25 (8) If the board of trustees, for reasons other than unsatisfactory
 26 service, for the ensuing contract year, determines to change the length of
 27 the term stated in the current contract, reduce the salary or not renew the
 28 contract of a certificated person whose contract would otherwise be automat-
 29 ically renewed, nothing herein shall require a probationary period.

30 SECTION 3. That Chapter 5, Title 33, Idaho Code, be, and the same is
 31 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 32 ignated as Section 33-522A, Idaho Code, and to read as follows:

33 33-522A. REDUCTIONS IN FORCE. (1) It is recognized that due to pro-
 34 grammatic change, shift or reduction in student enrollment, change in work
 35 requirements, educational reasons, elimination of positions by category,
 36 funding limitations, elimination or shifting of position in or between cer-
 37 tain grade levels and/or other considerations, a board of trustees of a dis-
 38 trict may need to reduce, reorganize, consolidate or otherwise take action
 39 relating to the number of positions for certificated professional employees
 40 of the district.

41 (2) The decision to institute a reduction in force and the selection
 42 of employee(s) subject to such reduction shall be at the sole discretion of
 43 the board of trustees. However, the board of trustees shall be responsible
 44 for creation of a system for layoffs that takes into consideration individ-
 45 ual performance, certification and endorsements, student needs and school
 46 needs, subject matter in course offerings and shifting student populations.
 47 In the instance where all of the above factors are equal for two (2) or more
 48 certificated professional employees, the board of trustees then may con-

1 sider the seniority of the certificated professional employee in making its
2 final decision of employee selection.

3 (3) Should a district select an individual employed pursuant to a
4 renewable status contract, pursuant to section 33-515, Idaho Code, to be
5 subject to a reduction in force, notwithstanding the provisions of section
6 33-515, Idaho Code, the board is not required to hold an individualized due
7 process hearing and the employee is not entitled to any period of probation
8 associated with performance.

9 (4) Should a district select an individual employed pursuant to a cat-
10 egory 3 contract, pursuant to section 33-514, Idaho Code, to be subject to a
11 reduction in force, notwithstanding the provisions of section 33-514, Idaho
12 Code, the board is not required to hold an individualized informal review or
13 any other form of individualized due process and the employee is not entitled
14 to any period of probation associated with performance.

15 (5) Should a district implement a reduction in force, all affected cer-
16 tificated professional personnel employed pursuant to a category 3 or renew-
17 able contract shall be given written notice describing the reasons for the
18 decision and the date of a single informal review before the board.

19 (6) The process and procedure for the single informal review shall be
20 determined by the local board of trustees. Within fifteen (15) days follow-
21 ing the meeting with the employee or employees, the board shall notify the
22 employee or employees of its final decision.

23 (7) Should a district implement a reduction in force, all affected cer-
24 tificated professional personnel employed pursuant to a category 1 or cate-
25 gory 2 contract are not entitled to an informal review or any individualized
26 or group due process before the local board of trustees. However, if the lo-
27 cal board of trustees is holding a single informal review for category 3 and
28 renewable contract employees associated with the reduction in force, the lo-
29 cal board of trustees may, at its sole discretion, include the individuals
30 employed pursuant to a category 2 as part of the informal review process.

31 SECTION 4. SEVERABILITY. The provisions of this act are hereby declared
32 to be severable and if any provision of this act or the application of such
33 provision to any person or circumstance is declared invalid for any reason,
34 such declaration shall not affect the validity of the remaining portions of
35 this act.

36 SECTION 5. An emergency existing therefor, which emergency is hereby
37 declared to exist, this act shall be in full force and effect on and after its
38 passage and approval.