

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 259, As Amended in the Senate

BY EDUCATION COMMITTEE

AN ACT

1 RELATING TO EDUCATION; AMENDING SECTION 33-513, IDAHO CODE, TO ESTABLISH  
2 PROVISIONS RELATING TO GRANTING AN EMPLOYEE'S REQUEST FOR VOLUNTARY  
3 LEAVE OF ABSENCE, TO ESTABLISH PROVISIONS RELATING TO THE DELEGATION OF  
4 AUTHORITY TO PLACE AN EMPLOYEE ON AN INVOLUNTARY LEAVE OF ABSENCE, TO  
5 ESTABLISH PROVISIONS RELATING TO THE RATIFICATION OR NULLIFICATION OF  
6 CERTAIN ACTIONS, TO ESTABLISH PROVISIONS RELATING TO A CRIMINAL COURT  
7 ORDER, TO ESTABLISH PROVISIONS RELATING TO THE SALARY OF AN EMPLOYEE  
8 DURING THE PERIOD OF INVOLUNTARY LEAVE OF ABSENCE WITHOUT PAY, TO ES-  
9 TABLISH PROVISIONS RELATING TO CERTAIN CREDIT WITH THE IDAHO PUBLIC  
10 EMPLOYEE RETIREMENT SYSTEM AND COSTS ASSOCIATED WITH EMPLOYEE HEALTH  
11 INSURANCE BENEFITS, TO ESTABLISH PROVISIONS RELATING TO DUAL COURT  
12 ORDERS, TO ESTABLISH PROVISIONS RELATING TO AN INVESTIGATION, TO ESTAB-  
13 LISH PROVISIONS RELATING TO A PERSONNEL RECOMMENDATION, TO ESTABLISH  
14 PROVISIONS RELATING TO THE MODIFICATION OF TIMELINES, TO MAKE A CODI-  
15 FIER'S CORRECTION AND TO MAKE TECHNICAL CORRECTIONS.  
16

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

18 SECTION 1. That Section 33-513, Idaho Code, be, and the same is hereby  
19 amended to read as follows:

20 33-513. PROFESSIONAL PERSONNEL. The board of trustees of each school  
21 district, including any specially chartered district, shall have the fol-  
22 lowing powers and duties:

23 1. To employ professional personnel, on written contract in form ap-  
24 proved by the state superintendent of public instruction, conditioned upon  
25 a valid certificate being held by such professional personnel at the time of  
26 entering upon the duties thereunder. Should the board of trustees fail to  
27 enter into written contract for the employment of any such person, the state  
28 superintendent of public instruction shall withhold ensuing apportionments  
29 until such written contract be entered into. When the board of trustees has  
30 delivered a proposed contract for the next ensuing year to any such person,  
31 such person shall have a period of time to be determined by the board of  
32 trustees in its discretion, but in no event less than ten (10) days from the  
33 date the contract is delivered, in which to sign the contract and return it to  
34 the board. Delivery of a contract may be made only in person or by certified  
35 mail, return receipt requested. When delivery is made in person, delivery  
36 of the contract must be acknowledged by a signed receipt. When delivery is  
37 made by certified mail, delivery must be acknowledged by the return of the  
38 certified mail receipt from the person to whom the contract was sent. Should  
39 the person willfully refuse to acknowledge receipt of the contract or the  
40 contract is not signed and returned to the board in the designated period of  
41 time, the board may declare the position vacant.

1           The board of trustees shall withhold the salary of any teacher who does  
2 not hold a teaching certificate valid in this state. It shall not contract  
3 to require any teacher to make up time spent in attending any meeting called  
4 by the state board of education or by the state superintendent of public in-  
5 struction; nor while attending regularly scheduled official meetings of the  
6 state teachers' association.

7           2. In the case of school districts other than elementary school dis-  
8 tricts, to employ a superintendent of schools for a term not to exceed three  
9 (3) years, who shall be the executive officer of the board of trustees with  
10 such powers and duties as the board may prescribe. The superintendent shall  
11 also act as the authorized representative of the district whenever such is  
12 required, unless some other person shall be named by the board of trustees to  
13 act as its authorized representative. The board of trustees shall conduct  
14 an annual, written formal evaluation of the work of the superintendent of  
15 the district. The evaluation shall indicate the strengths and weaknesses of  
16 the superintendent's job performance in the year immediately preceding the  
17 evaluation and areas where improvement in the superintendent's job perfor-  
18 mance, in the view of the board of trustees, is called for.

19           3. To employ through written contract principals who shall hold a valid  
20 certificate appropriate to the position for which they are employed, who  
21 shall supervise the operation and management of the school in accordance  
22 with the policies established by the board of trustees and who shall be under  
23 the supervision of the superintendent.

24           4. To employ assistant superintendents and principals for a term not  
25 to exceed two (2) years. Service performed under such contract shall be in-  
26 cluded in meeting the provisions of section 33-515, Idaho Code, as a teacher  
27 and persons eligible for a renewable contract as a teacher shall retain such  
28 eligibility.

29           5. To suspend, grant leave of absence, place on probation or discharge  
30 certificated professional personnel for a material violation of any lawful  
31 rules or regulations of the board of trustees or of the state board of edu-  
32 cation, or for any conduct which could constitute grounds for revocation of  
33 a teaching certificate. Any certificated professional employee, except the  
34 superintendent, may be discharged during a contract term under the following  
35 procedures:

36           (a) The superintendent or any other duly authorized administrative of-  
37 ficer of the school district may recommend the discharge of any certifi-  
38 cated employee by filing with the board of trustees written notice spec-  
39 ifying the alleged reasons for discharge.

40           (b) Upon receipt of such notice the board, acting through ~~their~~ its duly  
41 authorized administrative official, shall give the affected employee  
42 written notice of the allegations and the recommendation of discharge,  
43 along with written notice of a hearing before the board prior to any de-  
44 termination by the board of the truth of the allegations.

45           (c) The hearing shall be scheduled to take place not less than six (6)  
46 days nor more than twenty-one (21) days after receipt of the notice by  
47 the employee. The date provided for the hearing may be changed by mutual  
48 consent.

49           (d) The hearing shall be public unless the employee requests in writing  
50 that it be in executive session.

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

4 (f) The employee may be represented by legal counsel and/or by a repre-  
5 sentative of a local or state teachers association.

6 (g) The chairman of the board or the designee of the chairman shall con-  
7 duct the hearing.

8 (h) The board shall cause an electronic record of the hearing to be made  
9 or shall employ a competent reporter to take stenographic or steno-  
10 type notes of all the testimony at the hearing. A transcript of the hearing  
11 shall be provided at cost by the board upon request of the employee.

12 (i) At the hearing, the superintendent or other duly authorized admin-  
13 istrative officer shall present evidence to substantiate the allega-  
14 tions contained in such notice.

15 (j) The employee may produce evidence to refute the allegations. Any  
16 witness presented by the superintendent or by the employee shall be sub-  
17 ject to cross-examination. The board may also examine witnesses and be  
18 represented by counsel.

19 (k) The affected employee may file written briefs and arguments with  
20 the board within three (3) days after the close of the hearing or such  
21 other time as may be agreed upon by the affected employee and the board.

22 (l) Within fifteen (15) days following the close of the hearing, the  
23 board shall determine and, acting through ~~their~~ its duly authorized  
24 administrative official, shall notify the employee in writing whether  
25 the evidence presented at the hearing established the truth of the  
26 allegations and whether the employee is to be retained, immediately  
27 discharged, or discharged upon termination of the current contract.

28 6. To grant an employee's request for voluntary leave of absence. The  
29 board of trustees may delegate ongoing authority to grant an employee's  
30 request for voluntary leave of absence to the district's superintendent or  
31 other designee. Upon the superintendent or designee's granting of an em-  
32 ployee's request for voluntary leave of absence, the board shall ratify or  
33 nullify the action at the next regularly scheduled board meeting.

34 7. To delegate to the superintendent or other designee the ongoing  
35 authority to place any employee on a period of involuntary leave of absence  
36 should the superintendent or designee believe that such action is in the  
37 best interest of the district. Upon the superintendent or designee's action  
38 to place an employee on a period of involuntary leave of absence, the board  
39 shall ratify or nullify the action of the superintendent or designee at the  
40 next regularly scheduled meeting of the board or at a special meeting of the  
41 board should the next regularly scheduled meeting of the board not be within  
42 a period of twenty-one (21) days from the date of the action.

43 (a) Where there is a criminal court order preventing the employee from  
44 being in the presence of minors or students, preventing the employee  
45 from being in the presence of any other adult individual employed at  
46 the school or detaining the employee in prison or jail, the employee's  
47 involuntary leave of absence shall be without pay due to the employee's  
48 inability to perform the essential functions of the employee's posi-  
49 tion. Without such a condition or situation, the involuntary leave of  
50 absence shall be with pay.

1           (i) During the period of involuntary leave of absence without  
2 pay, the salary of the employee will be maintained in a district  
3 managed account. Should the employee return to the district for  
4 active employment subsequent to the removal or dismissal of the  
5 court order, acquittal or adjudication of innocence, the district  
6 shall remit the salary funds, less the cost incurred by the dis-  
7 trict for the substitute hired to replace the employee. Further,  
8 should the employee return to the district under the provisions  
9 established in this subsection, the district shall arrange to have  
10 the employee credited with the public employee retirement system  
11 of Idaho (PERSI) for the employee's time away from work during the  
12 period of leave of absence.

13           (ii) During the period of involuntary leave of absence, the dis-  
14 trict shall continue to pay the district's portion of monthly  
15 costs associated with employee health insurance benefits. The  
16 assumption of this payment by the district shall not alter the em-  
17 ployee's financial obligations, if any, under the policy.

18           (b) Should there be dual court orders preventing more than one (1) em-  
19 ployee from being in the presence of one (1) or more other employees, all  
20 employees subject to the court order shall be excluded from the school  
21 pursuant to subsection 7. (a) of this section.

22           (c) If the period of involuntary leave of absence is due to the dis-  
23 trict's need to conduct an investigation into the conduct of the em-  
24 ployee, and there are no related criminal investigation(s) and/or crim-  
25 inal charges of any nature pending, the administration shall complete  
26 its investigation within a period of sixty (60) working days. On or  
27 before the sixtieth working day, the administrative leave shall either  
28 cease and the employee shall be returned to his position of employment  
29 or the administration shall advance a personnel recommendation to the  
30 board of trustees. If a recommendation is advanced, the involuntary  
31 leave of absence shall continue until such time as the district board  
32 has made its decision in regard to the personnel recommendation with  
33 such decision effectively concluding the involuntary leave of absence.  
34 If a related criminal investigation is occurring and/or criminal  
35 charges are pending, the district shall not be bound to any limitation  
36 as to the duration of involuntary leave of absence. The timelines es-  
37 tablished in this section may be waived or modified by mutual agreement.