

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 316

BY EDUCATION COMMITTEE

AN ACT

RELATING TO EDUCATION; AMENDING SECTION 33-513, IDAHO CODE, AS AMENDED IN SECTION 1, HOUSE BILL NO. 259, AS ENACTED BY THE FIRST REGULAR SESSION, SIXTY-SECOND IDAHO LEGISLATURE, TO REVISE PROVISIONS REGARDING AN EMPLOYEE'S INVOLUNTARY LEAVE OF ABSENCE AND PAYMENT THEREOF.

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

SECTION 1. That Section 33-513, Idaho Code, as amended in Section 1 of House Bill No. 259, as enacted by the First Regular Session of the Sixty-second Idaho Legislature, be, and the same is hereby amended to read as follows:

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

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

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

2. In the case of school districts other than elementary school districts, to employ a superintendent of schools for a term not to exceed three (3) years, who shall be the executive officer of the board of trustees with such powers and duties as the board may prescribe. The superintendent shall also act as the authorized representative of the district whenever such is

1 required, unless some other person shall be named by the board of trustees to
2 act as its authorized representative. The board of trustees shall conduct
3 an annual, written formal evaluation of the work of the superintendent of
4 the district. The evaluation shall indicate the strengths and weaknesses of
5 the superintendent's job performance in the year immediately preceding the
6 evaluation and areas where improvement in the superintendent's job perfor-
7 mance, in the view of the board of trustees, is called for.

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

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

18 5. To suspend, grant leave of absence, place on probation or discharge
19 certificated professional personnel for a material violation of any lawful
20 rules or regulations of the board of trustees or of the state board of edu-
21 cation, or for any conduct which could constitute grounds for revocation of
22 a teaching certificate. Any certificated professional employee, except the
23 superintendent, may be discharged during a contract term under the following
24 procedures:

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

29 (b) Upon receipt of such notice the board, acting through its duly
30 authorized administrative official, shall give the affected employee
31 written notice of the allegations and the recommendation of discharge,
32 along with written notice of a hearing before the board prior to any de-
33 termination by the board of the truth of the allegations.

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

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

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

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

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

47 (h) The board shall cause an electronic record of the hearing to be made
48 or shall employ a competent reporter to take stenographic or stenotype
49 notes of all the testimony at the hearing. A transcript of the hearing
50 shall be provided at cost by the board upon request of the employee.

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

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

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

11 (l) Within fifteen (15) days following the close of the hearing, the
12 board shall determine and, acting through its duly authorized adminis-
13 trative official, shall notify the employee in writing whether the evi-
14 dence presented at the hearing established the truth of the allegations
15 and whether the employee is to be retained, immediately discharged, or
16 discharged upon termination of the current contract.

17 6. To grant an employee's request for voluntary leave of absence. The
18 board of trustees may delegate ongoing authority to grant an employee's
19 request for voluntary leave of absence to the district's superintendent or
20 other designee. Upon the superintendent or designee's granting of an em-
21 ployee's request for voluntary leave of absence, the board shall ratify or
22 nullify the action at the next regularly scheduled board meeting.

23 7. To delegate to the superintendent or other designee the ongoing
24 authority to place any employee on a period of involuntary leave of absence
25 should the superintendent or designee believe that such action is in the
26 best interest of the district. Upon the superintendent or designee's action
27 to place an employee on a period of involuntary leave of absence, the board
28 shall ratify or nullify the action of the superintendent or designee at the
29 next regularly scheduled meeting of the board or at a special meeting of the
30 board should the next regularly scheduled meeting of the board not be within
31 a period of twenty-one (21) days from the date of the action.

32 (a) Where there is a criminal court order preventing the employee from
33 being in the presence of minors or students at the school district where
34 the employee is employed, preventing the employee from being in the
35 presence of any other adult individual employed at the school or detain-
36 ing the employee in prison or jail, the employee's involuntary leave of
37 absence shall be without pay due to the employee's inability to perform
38 the essential functions of the employee's position. Without such a
39 condition or situation, the involuntary leave of absence shall be with
40 pay criminal court order, the involuntary leave of absence shall be with
41 pay. Such pay otherwise due to the employee, however, will be paid by
42 the school district into an escrow account with instructions that upon
43 the removal of the criminal court order, acquittal or an adjudication of
44 innocence, such escrow account funds will be remitted to the employee,
45 along with any back benefits for which the employee would have been
46 qualified minus the cost of a substitute that was hired to replace the
47 employee. The instructions will further direct that the funds in the
48 escrow account will be remitted to the school district upon a finding of
49 guilt of a criminal offense that would constitute grounds for revoca-
50 tion, suspension or denial of a certificate.

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

5 (c) If the period of involuntary leave of absence is due to the dis-
6 trict's need to conduct an investigation into the conduct of the em-
7 ployee, and there are no related criminal investigation(s) and/or crim-
8 inal charges of any nature pending, the administration shall complete
9 its investigation within a period of sixty (60) working days. On or
10 before the sixtieth working day, the administrative leave shall either
11 cease and the employee shall be returned to his position of employment
12 or the administration shall advance a personnel recommendation to the
13 board of trustees. If a recommendation is advanced, the involuntary
14 leave of absence shall continue until such time as the district board
15 has made its decision in regard to the personnel recommendation with
16 such decision effectively concluding the involuntary leave of absence.
17 If a related criminal investigation is occurring and/or criminal
18 charges are pending, the district shall not be bound to any limitation
19 as to the duration of involuntary leave of absence. The timelines es-
20 tablished in this section may be waived or modified by mutual agreement.