

IN THE SENATE

SENATE BILL NO. 1038

BY EDUCATION COMMITTEE

AN ACT

1 RELATING TO EDUCATION; AMENDING SECTION 33-513, IDAHO CODE, TO ESTABLISH
2 PROVISIONS RELATING TO AN EMPLOYEE'S APPEAL TO THE DISTRICT COURT, TO
3 ESTABLISH PROVISIONS RELATING TO THE DISTRICT COURT'S ACTION, TO PRO-
4 VIDE THAT THE DETERMINATION OF THE BOARD OF TRUSTEES SHALL BE AFFIRMED
5 UNLESS THE EMPLOYEE'S SUBSTANTIAL RIGHTS ARE VIOLATED AND TO MAKE A COD-
6 FIER'S CORRECTION; AND DECLARING AN EMERGENCY.
7

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

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

11 33-513. PROFESSIONAL PERSONNEL. The board of trustees of each school
12 district including any specially chartered district, shall have the follow-
13 ing powers and duties:

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

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

39 2. In the case of school districts other than elementary school dis-
40 tricts, to employ a superintendent of schools for a term not to exceed three
41 (3) years, who shall be the executive officer of the board of trustees with
42 such powers and duties as the board may prescribe. The superintendent shall

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

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

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

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

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

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

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

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

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

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

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

48 (h) The board shall cause an electronic record of the hearing to be made
49 or shall employ a competent reporter to take stenographic or stenotype

1 notes of all the testimony at the hearing. A transcript of the hearing
2 shall be provided at cost by the board upon request of the employee.

3 (i) At the hearing the superintendent or other duly authorized adminis-
4 trative officer shall present evidence to substantiate the allegations
5 contained in such notice.

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

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

13 (l) Within fifteen (15) days following the close of the hearing, the
14 board shall determine and, acting through their duly authorized ad-
15 ministrative official, shall notify the employee in writing whether
16 the evidence presented at the hearing established the truth of the
17 allegations and whether the employee is to be retained, immediately
18 discharged, or discharged upon termination of the current contract.

19 (m) If the employee appeals the decision of the board of trustees to the
20 district court, the district court may affirm the board's decision or
21 set it aside and remand the matter to the board of trustees upon the fol-
22 lowing grounds and shall not set the same aside for any other grounds:

23 (i) That the findings of fact are not based upon any substantial,
24 competent evidence;

25 (ii) That the board of trustees has acted without jurisdiction or
26 in excess of its authority;

27 (iii) That the findings by the board of trustees as a matter of law
28 do not support the decision.

29 (n) The determination of the board of trustees shall be affirmed un-
30 less the employee's substantial rights, as that term is used in section
31 67-5279, Idaho Code, are violated.

32 SECTION 2. An emergency existing therefor, which emergency is hereby
33 declared to exist, this act shall be in full force and effect on and after its
34 passage and approval.