

IN THE SENATE

SENATE BILL NO. 1096

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
4 OF AUTHORITY TO PLACE AN EMPLOYEE ON AN INVOLUNTARY LEAVE OF ABSENCE,
5 TO PROVIDE FOR RATIFICATION OF CERTAIN ACTION, TO ESTABLISH PROVI-
6 SIONS RELATING TO AN INVESTIGATION, TO ESTABLISH PROVISIONS RELATING
7 TO AN INVOLUNTARY LEAVE OF ABSENCE WITHOUT PAY, TO ESTABLISH PROVISIONS
8 RELATING TO AN INVOLUNTARY LEAVE OF ABSENCE WITH PAY, TO ESTABLISH PRO-
9 VISIONS RELATING TO DUAL COURT ORDERS, TO MAKE A CODIFIER'S CORRECTION
10 AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 33-514, IDAHO CODE,
11 TO REVISE A DATE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION
12 33-515, IDAHO CODE, TO REMOVE LANGUAGE RELATING TO A NOTICE CONCERNING
13 RENEWAL OF A CONTRACT, TO REVISE A DATE, TO REVISE PROVISIONS RELATING
14 TO CONTRACTS AUTOMATICALLY RENEWED, TO ESTABLISH PROVISIONS RELATING
15 TO AN INFORMAL REVIEW IF THE BOARD DETERMINES TO CHANGE CERTAIN TERMS OF
16 A CONTRACT, TO MAKE A CODIFIER'S CORRECTION AND TO MAKE TECHNICAL COR-
17 RECTIONS; PROVIDING SEVERABILITY; AND DECLARING AN EMERGENCY.
18

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

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

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

25 1. To employ professional personnel, on written contract in form ap-
26 proved by the state superintendent of public instruction, conditioned upon
27 a valid certificate being held by such professional personnel at the time of
28 entering upon the duties thereunder. Should the board of trustees fail to
29 enter into written contract for the employment of any such person, the state
30 superintendent of public instruction shall withhold ensuing apportionments
31 until such written contract be entered into. When the board of trustees has
32 delivered a proposed contract for the next ensuing year to any such person,
33 such person shall have a period of time to be determined by the board of
34 trustees in its discretion, but in no event less than ten (10) days from the
35 date the contract is delivered, in which to sign the contract and return it to
36 the board. Delivery of a contract may be made only in person or by certified
37 mail, return receipt requested. When delivery is made in person, delivery
38 of the contract must be acknowledged by a signed receipt. When delivery is
39 made by certified mail, delivery must be acknowledged by the return of the
40 certified mail receipt from the person to whom the contract was sent. Should
41 the person willfully refuse to acknowledge receipt of the contract or the

1 contract is not signed and returned to the board in the designated period of
2 time, the board may declare the position vacant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (a) If the period of involuntary leave of absence is due to the dis-
46 trict's need to conduct an investigation into the conduct of the em-
47 ployee, and there are no related criminal investigation(s) and/or crim-
48 inal charges of any nature pending, the administration shall complete
49 its investigation within a period of sixty (60) working days. On or
50 before the sixtieth working day, the administrative leave shall either

1 cease and the employee shall be returned to their position of employ-
 2 ment, or the administration shall advance a personnel recommendation to
 3 the board of trustees. If a recommendation is advanced, the involuntary
 4 leave of absence shall continue until such time as the district board
 5 has made its decision in regard to the personnel recommendation with
 6 such decision effectively concluding the involuntary leave of absence.
 7 If related criminal investigations are occurring and/or criminal
 8 charges are pending, the district shall not be bound to any limitation
 9 as to the duration of involuntary leave of absence. The timelines es-
 10 ablished in the section may be waived or modified by mutual agreement.

11 (b) Where there is a criminal court order preventing the employee from
 12 being in the presence of minors or students, preventing the employee
 13 from being in the presence of any other adult individual employed at
 14 the school or detaining the employee in prison or jail, the employee's
 15 involuntary leave of absence shall be without pay due to the employee's
 16 inability to perform the essential functions of the employee's posi-
 17 tion. Without such a condition or situation, the involuntary leave of
 18 absence shall be with pay.

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

23 SECTION 2. That Section 33-514, Idaho Code, be, and the same is hereby
 24 amended to read as follows:

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

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

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

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

42 (c) A category 3 contract is for certificated personnel during the
 43 third year of continuous employment by the same school district. Dis-
 44 trict procedures shall require at least one (1) evaluation prior to
 45 the beginning of the second semester of the school year and the re-
 46 sults of any such evaluation shall be made a matter of record in the
 47 employee's personnel file. When any such employee's work is found to
 48 be unsatisfactory, a defined period of probation shall be established
 49 by the board, but in no case shall a probationary period be less than

1 eight (8) weeks. After the probationary period, action shall be taken
 2 by the board as to whether the employee is to be retained, immediately
 3 discharged, discharged upon termination of the current contract or
 4 reemployed at the end of the contract term under a continued probation-
 5 ary status. Notwithstanding the provisions of sections 67-2344 and
 6 67-2345, Idaho Code, a decision to place certificated personnel on pro-
 7 bationary status may be made in executive session and the employee shall
 8 not be named in the minutes of the meeting. A record of the decision
 9 shall be placed in the employee's personnel file. This procedure shall
 10 not preclude recognition of unsatisfactory work at a subsequent evalu-
 11 ation and the establishment of a reasonable period of probation. In all
 12 instances, the employee shall be duly notified in writing of the areas
 13 of work which are deficient, including the conditions of probation.
 14 Each such certificated employee on a category 3 contract shall be given
 15 notice, in writing, whether he or she will be reemployed for the next en-
 16 suing year. Such notice shall be given by the board of trustees no later
 17 than the ~~twenty-fifth day of May~~ first day of July of each such year.
 18 If the board of trustees has decided not to reemploy the certificated
 19 employee, then the notice must contain a statement of reasons for such
 20 decision and the employee shall, upon request, be given the opportunity
 21 for an informal review of such decision by the board of trustees. The
 22 parameters of an informal review shall be determined by the local board.

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

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

34 SECTION 3. That Section 33-515, Idaho Code, be, and the same is hereby
 35 amended to read as follows:

36 33-515. ISSUANCE OF RENEWABLE CONTRACTS. (1) During the third full
 37 year of continuous employment by the same school district, including any
 38 specially chartered district, each certificated employee named in subsec-
 39 tion (16) of section 33-1001, Idaho Code, and each school nurse and school
 40 librarian shall be evaluated for a renewable contract and shall, upon having
 41 been offered a contract for the next ensuing year, ~~having given notice of~~
 42 ~~acceptance of renewal~~ and upon signing and timely returning a contract for a
 43 fourth full year, be placed on a renewable contract status with said school
 44 district, entitling such individual to the right to automatic renewal of
 45 contract, subject to the provisions included in this chapter.

46 (2) ~~After the third full year of employment and a~~ At least once annually,
 47 the performance of each such renewable contract certificated employee,
 48 school nurse, or school librarian shall be evaluated according to crite-
 49 ria and procedures established by the board of trustees in accordance with

1 general guidelines approved by the state board of education. ~~Except as oth-~~
2 ~~erwise provided, that person shall have the right to automatic renewal of~~
3 ~~contract by giving notice, in writing, of acceptance of renewal. Such notice~~
4 ~~shall be given to the board of trustees of the school district then employing~~
5 ~~such person not later than the first day of June preceding the expiration~~
6 ~~of the term of the current contract. Except as otherwise provided by this~~
7 ~~paragraph, the board of trustees shall notify each person entitled to be em-~~
8 ~~ployed on a renewable contract of the requirement that such person must give~~
9 ~~the notice hereinabove and that failure to do so may be interpreted by the~~
10 ~~board as a declination of the right to automatic renewal or the offer of an-~~
11 ~~other contract. Such notification shall be made, in writing, not later than~~
12 ~~the fifteenth day of May, in each year, except to those persons to whom the~~
13 ~~board, prior to said date, has sent proposed contracts for the next ensuing~~
14 ~~year, or to whom the board has given the notice required by this section.~~

15 (3) Any contract automatically renewed under the provisions of this
16 section shall be for the same length as the term stated in the current con-
17 tract and at a salary no lower than that specified therein, to which shall
18 be added such increments as may be determined by the statutory or regulatory
19 rights of such employee by reason of training, service, or performance, ex-
20 cept where a board of trustees has declared a financial emergency pursuant
21 to section 33-522, Idaho Code may be renewed for a shorter term, longer term
22 or the same length of term as stated in the current contract and at a greater,
23 lesser or equal salary as that stated in the current contract. Absent the
24 board's application of a formal reduction in force, renewals for a shorter
25 term, longer term or the same length of term as stated in the current contract
26 and at a greater, lesser or equal salary, shall be uniformly applied to all
27 employees to the extent allowable in section 33-1004E, Idaho Code.

28 (a) Contracts issued pursuant to this section shall be issued on or be-
29 fore the first day of July each year.

30 (b) At the discretion of the board, the district may issue letters of
31 intent for employment for the next ensuing school year, to renewable
32 contract status employees during May of each school year. Such let-
33 ter of intent shall not state a specific duration of the contract or
34 salary/benefits term for the next ensuing school year.

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

45 (5) Before a board of trustees can determine not to renew for reasons of
46 an unsatisfactory report of the performance of any certificated person whose
47 contract would otherwise be automatically renewed, ~~or to renew the contract~~
48 ~~of any such person at a reduced salary,~~ such person shall be entitled to a
49 reasonable period of probation. This period of probation shall be preceded
50 by a written notice from the board of trustees with reasons for such pro-

1 probationary period and with provisions for adequate supervision and evalua-
2 tion of the person's performance during the probationary period. Such pe-
3 riod of probation shall not affect the person's renewable contract status.
4 Consideration of probationary status for certificated personnel is consid-
5 eration of the status of an employee within the meaning of section 67-2345,
6 Idaho Code, and may be held in executive session. If the consideration re-
7 sults in probationary status, the individual on probation shall not be named
8 in the minutes of the meeting. A record of the decision shall be placed in the
9 teacher's personnel file.

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

19 (7) If the board of trustees takes action after the declaration of a fi-
20 nancial emergency pursuant to section 33-522, Idaho Code, and such action is
21 directed at more than one (1) certificated employee and, if mutually agreed
22 to by both parties, a single informal review shall be conducted. Without
23 mutual consent of both parties, the board of trustees shall use the follow-
24 ing procedure to conduct a single due process hearing within sixty-seven
25 (67) days of the declaration of financial emergency pursuant to section
26 33-522(2), Idaho Code, or on or before June 22, whichever shall occur first:

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

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

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

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

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

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

49 (g) The chairman of the board of trustees or the designee of the chair-
50 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 (9) If the board of trustees, for reasons other than unsatisfactory
31 service, for the ensuing contract year, determines to change the length
32 of the term stated in the current contract or reduce the salary of a cer-
33 tificated person whose contract would otherwise be automatically renewed,
34 nothing herein shall require any individualized due process proceeding. In
35 such circumstance, the board shall hold a single informal review as detailed
36 in section 33-522A, Idaho Code. The process and procedure for the single
37 informal review shall be determined by the local board of trustees.

38 SECTION 4. SEVERABILITY. The provisions of this act are hereby declared
39 to be severable and if any provision of this act or the application of such
40 provision to any person or circumstance is declared invalid for any reason,
41 such declaration shall not affect the validity of the remaining portions of
42 this act.

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