

MINUTES
HOUSE EDUCATION COMMITTEE

DATE: Wednesday, March 27, 2013
TIME: 9:00 A.M.
PLACE: Room EW41
MEMBERS: Chairman DeMordaunt, Vice Chairman Nielsen, Representatives Shepherd, Wills, Bateman, Boyle, Agidius, Clow, Gestrin, Harris, Horman, Mendive, VanOrden, Pence, Kloc, Ward-Engelking
**ABSENT/
EXCUSED:** None.
GUESTS: Paul Stark, Legal Counsel, Idaho Education Association (IEA); Harold Ott, Idaho Rural Schools Association; Rob Winslow and Phil Homer, Idaho Association of School Administrators; Tom Luna, Superintendent, and Camille Wells, Idaho State Department of Education

Chairman DeMordaunt called the meeting to order at 9:06 a.m.

S 1150 **Karen Echeverria**, Director, Idaho School Boards Association, presented **S 1150**. She explained the legislation and the change. She noted amendments found in the legislation outlines what decisions can be made by the District Court should a teacher termination be appealed. She said, under the current law, the board of trustees will conduct a hearing on a teacher termination and make a decision based on the information that has been presented. Once that decision is made, an employee has the option to appeal the board's decision to the District Court. Again, under the current law, a whole new trial begins at that level. Ms. Echeverria told the committee, the problem comes when the certificated employee's attorney now has all the information that was presented to the school district. No record is forwarded to the judge, and he is free to take new evidence not presented to the school district. In the end, the judge will make a decision that is completely separate from the one made by the local board of trustees. Ms. Echeverria said the option is not available with either city or county employees and the option is also not available for non-certificated employees in a school district. She asked lawmakers to make clear, that an employee give the same evidence to both the school board and the District Court judge.

To a question from the committee, **Ms. Echeverria** said the District Court should not be able to change the judgment of the board.

Paul Stark, General Counsel, IEA, spoke **in opposition** to **S 1150**. He explained the reasons the legislation should not become law. He cited (1) lack of fairness in the process; (2) infringement of individual rights to a neutral, unbiased decision maker, in favor of a government mandated process; and (3) school boards sitting in a judicial capacity. He said in the case of teacher dismissal, the school board and superintendent must hire different attorneys; however, the IEA has found that the hearing officer, or the attorney of the school board, is often handpicked by the attorney representing the superintendent. He said the legislation will require the teacher to create an exhaustive record before the school board because the teacher will be limited to that record in District Court. He also objected to the deadlines in the legislation. He noted six days to three weeks is too short a time period to gather evidence, interview witnesses, and prepare for a hearing. He cited the school board's deadline is 15 days to render a decision. Mr. Stark said the deadlines create due process problems. In addition, the Rules of Civil Procedure will not apply and there is no subpoena power, and no right to a jury. He concluded

the provisions within the bill mirror provisions existing in the propositions of the November 2012 repeal.

To a question from the committee, **Mr. Stark** said it would be egregious if the teacher was terminated because of rumors and hearsay. He felt the rules of the board procedures could not avoid a "trial by ambush." He said the issue of fairness is not part of the legislative proposal for school boards to receive the only evidence permissible for both hearings. He said during the past 10 years, 17 cases have been taken to trial by the office of the general counsel for the IEA. He noted, most often teachers choose to resign.

MOTION:

Rep. Ward-Engelking made a motion to **HOLD S 1150** in committee.

Tom Luna, Superintendent, Idaho State Department of Education (ISDE), spoke **in favor of S 1150**. He said the responsibility of ISDE is to have a competent and effective teacher in each classroom in Idaho. He explained, as a school board member, he had to buy out teachers' contracts and send them on with no evidence of wrongdoing or ineffectiveness in their permanent files. He said, Idaho is not plagued with ineffective teachers; however, children suffer when ineffective teachers are present. He noted school boards need to have the power to remove those ineffective employees. He added, if wrongfully dismissed, a teacher has due process.

To a question from the committee, **Mr. Luna** said there is nothing in the legislation that says they cannot subpoena records. Responding to a question regarding the power given to school boards, he said the power given to the school board is similar to that found in other private and public employment. The board reviews the action; they do not try the case again. To another question, Mr. Luna said there are many steps prior to the board decision. The teacher is evaluated by the administrator, given guidance, and put on probation. The teacher is well aware of the facts prior to the school board hearing and the decision making.

Ms. Echeverria was called upon to close debate. She said that school board members do sit in quasi-judicial positions, similar to city councils. She noted the legislation does not change time-lines for teacher dismissal. She said it is essential to have the same evidence brought before both the school board and the District Court.

In response to questions from the committee, **Ms. Echeverria** said the time-lines have not been an issue in past proceedings. She related the script of the school board meeting hearing is not available for public viewing.

SUBSTITUTE MOTION:

Rep. Gestrin made a substitute motion to send **S 1150** to the floor with a **DO PASS** recommendation.

Reps. Horman, Bateman and Nielsen spoke **in favor** of the motion. Rep. Horman said, from her experience serving on a school board, dismissal of a teacher is a long process. The administration has to be very careful to get the facts and to carefully review only those facts. She said school board members are not rubber stamps for the superintendent. Rep. Bateman stated that he loved his profession and loved his colleagues. However, in his 37 years of experience as a teacher, there was never a tenured teacher removed; but there should have been. He said the cost to remove an incompetent teacher is high. He asked lawmakers to think of the kids, the ones that suffer from adults who should not be in the classroom. Rep. Nielsen said **S 1150** is an excellent bill.

**ROLL CALL
VOTE ON
SUBSTITUTE
MOTION**

Roll call vote was requested on the substitute motion to send **S 1150** to the floor with a **DO PASS** recommendation. **Motion carried by a vote of 12 AYE and 4 NAY.** **Voting in favor** of the motion: **Reps. Nielsen, Wills, Shepherd, Boyle, Bateman, Clow, Gestrin, Harris, Horman, Mendive, VanOrden, and DeMordaunt.** **Voting in opposition** to the motion: **Reps. Agidius, Pence, Kloc and Ward-Engelking.** **Rep. Boyle** will sponsor the bill on the floor.

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 10:02 a.m.

Representative DeMordaunt
Chair

Jean Vance
Secretary