

IN THE SENATE

SENATE BILL NO. 1342

BY EDUCATION COMMITTEE

AN ACT

1 RELATING TO SCHOOL DISTRICTS; AMENDING SECTION 33-513, IDAHO CODE, TO PRO-  
2 VIDE FOR RECORD AUGMENTATION ON APPEAL AND TO PROVIDE FOR A SUPERINTEN-  
3 DENT OR OTHER DESIGNEE'S ONGOING AUTHORITY TO PLACE A CERTIFICATED EM-  
4 PLOYEE ON INVOLUNTARY LEAVE.  
5

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

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

9 33-513. PROFESSIONAL PERSONNEL. The board of trustees of each school  
10 district, including any specially chartered district, shall have the fol-  
11 lowing powers and duties:

12 1. To employ professional personnel, on written contract in form ap-  
13 proved by the state superintendent of public instruction, conditioned upon  
14 a valid certificate being held by such professional personnel at the time of  
15 entering upon the duties thereunder. Should the board of trustees fail to  
16 enter into written contract for the employment of any such person, the state  
17 superintendent of public instruction shall withhold ensuing apportionments  
18 until such written contract be entered into. When the board of trustees has  
19 delivered a proposed contract for the next ensuing year to any such per-  
20 son, such person shall have a period of time to be determined by the board  
21 of trustees in its discretion, but in no event less than ten (10) calendar  
22 days from the date the contract is delivered, in which to sign the contract  
23 and return it to the board. If the board of trustees does not make a deter-  
24 mination as to how long the person has to sign and return the contract, the  
25 default time limit shall be twenty-one (21) calendar days after the contract  
26 is delivered to the person. Delivery of a contract may be made only in person  
27 or by certified mail, return receipt requested or electronically, return  
28 receipt requested. When delivery is made in person, delivery of the contract  
29 must be acknowledged by a signed receipt. When delivery is made by certified  
30 mail or electronically, delivery must be acknowledged by the return of the  
31 certified mail receipt or return electronic receipt from the person to whom  
32 the contract was sent. If the delivery is made electronically, with return  
33 electronic receipt, and the district has not received a return of a signed  
34 contract and has not received an electronic read receipt from the employee,  
35 the district shall then resend the original electronically delivered con-  
36 tract to the employee via certified mail, return receipt requested, and  
37 provide such individual with a new date for contract return. Should the per-  
38 son willfully refuse to acknowledge receipt of the contract or the contract  
39 is not signed and returned to the board in the designated period of time or if  
40 no designated period of time is set by the board, the default time, the board  
41 or its designee 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  
28 such eligibility. The superintendent, the superintendent's designee, or  
29 in a school district that does not employ a superintendent, the board of  
30 trustees, shall conduct an annual, written evaluation of each such em-  
31 ployee's performance.

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

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

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

48           (c) The hearing shall be scheduled to take place not less than six (6)  
49 days nor more than twenty-one (21) days after receipt of the notice by

1 the employee. The date provided for the hearing may be changed by mutual  
2 consent.

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (n) The determination of the board of trustees shall be affirmed unless  
43 the court finds that the action of the board of trustees was:

44 (i) In violation of constitutional or statutory provisions;

45 (ii) In excess of the statutory authority of the board;

46 (iii) Made upon unlawful procedure; or

47 (iv) Arbitrary, capricious or an abuse of discretion.

48 (o) Record augmentation on appeal:

49 (i) If before the date set for any hearing at the district court,  
50 application is made to the court for leave to present additional

1 evidence and it is shown to the satisfaction of the court that the  
2 additional evidence is material, relates to the validity of the  
3 board action and that there was good cause for failure to present  
4 it in the proceeding before the board, then the court may remand  
5 the matter to the board with direction that the board receive addi-  
6 tional evidence and conduct additional fact-finding;

7 (ii) Any party desiring to augment the transcript or record may  
8 file a motion in the same manner and pursuant to the same procedure  
9 for augmentation of the record in appeals to the supreme court; and

10 (iii) The board may modify its action by reason of the additional  
11 evidence and shall file any modifications, new findings or deci-  
12 sions with the reviewing court.

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

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

28 (a) Where there is a criminal court order preventing the certificated  
29 employee from being in the presence of minors or students, preventing  
30 the employee from being in the presence of any other adult individual  
31 employed at the school or detaining the employee in prison or jail, the  
32 certificated employee's involuntary leave of absence shall be without  
33 pay due to the certificated employee's inability to perform the essen-  
34 tial functions of the employee's position. Without such a condition or  
35 situation, the involuntary leave of absence shall be with pay.

36 (i) During the period of involuntary leave of absence without  
37 pay, the salary of the certificated employee will be maintained  
38 in a district managed account. Should the certificated employee  
39 return to the district for active employment subsequent to the  
40 removal or dismissal of the court order, acquittal or adjudication  
41 of innocence, the district shall remit the salary funds, less the  
42 cost incurred by the district for the substitute hired to replace  
43 the certificated employee. Further, should the certificated  
44 employee return to the district under the provisions estab-  
45 lished in this subsection, the district shall arrange to have the  
46 certificated employee credited with the public employee retire-  
47 ment system of Idaho (PERSI) for the certificated employee's time  
48 away from work during the period of leave of absence.

49 (ii) During the period of involuntary leave of absence, the dis-  
50 trict shall continue to pay the district's portion of monthly

1 costs associated with the certificated employee's health insur-  
2 ance benefits. The assumption of this payment by the district  
3 shall not alter the certificated employee's financial obliga-  
4 tions, if any, under the policy.

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

9 (c) If the period of involuntary leave of absence is due to the dis-  
10 trict's need to conduct an investigation into the conduct of the  
11 certificated employee, and there are no related criminal investiga-  
12 tion(s) and/or criminal charges of any nature pending, the adminis-  
13 tration shall complete its investigation within a period of sixty (60)  
14 working days. On or before the sixtieth working day, the administra-  
15 tive leave shall either cease and the certificated employee shall be  
16 returned to his position of employment or the administration shall ad-  
17 vance a personnel recommendation to the board of trustees. If a recom-  
18 mendation is advanced, the involuntary leave of absence shall continue  
19 until such time as the district board has made its decision in regard to  
20 the personnel recommendation with such decision effectively concluding  
21 the involuntary leave of absence. If a related criminal investigation  
22 is occurring and/or criminal charges are pending, the district shall  
23 not be bound to any limitation as to the duration of involuntary leave  
24 of absence. The timelines established in this section may be waived or  
25 modified by mutual agreement.