

IN THE SENATE

SENATE BILL NO. 1181

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO EDUCATION; AMENDING SECTION 33-513, IDAHO CODE, TO ESTABLISH  
2 PROVISIONS REGARDING THE ANNUAL EVALUATION OF A SCHOOL DISTRICT SU-  
3 PERINTENDENT AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION  
4 33-5206, IDAHO CODE, TO ESTABLISH PROVISIONS REGARDING THE ANNUAL EVAL-  
5 UATION OF THE CHIEF ADMINISTRATOR OF A PUBLIC CHARTER SCHOOL AND TO MAKE  
6 TECHNICAL CORRECTIONS.  
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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 fol-  
13 lowing 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 per-  
22 son, such person shall have a period of time to be determined by the board  
23 of trustees in its discretion, but in no event less than ten (10) calendar  
24 days from the date the contract is delivered, in which to sign the contract  
25 and return it to the board. If the board of trustees does not make a deter-  
26 mination as to how long the person has to sign and return the contract, the  
27 default time limit shall be twenty-one (21) calendar days after the contract  
28 is delivered to the person. Delivery of a contract may be made only in person  
29 or by certified mail, return receipt requested or electronically, return  
30 receipt requested. When delivery is made in person, delivery of the contract  
31 must be acknowledged by a signed receipt. When delivery is made by certified  
32 mail or electronically, delivery must be acknowledged by the return of the  
33 certified mail receipt or return electronic receipt from the person to whom  
34 the contract was sent. If the delivery is made electronically, with return  
35 electronic receipt, and the district has not received a return of a signed  
36 contract and has not received an electronic read receipt from the employee,  
37 the district shall then resend the original electronically delivered con-  
38 tract to the employee via certified mail, return receipt requested, and  
39 provide such individual with a new date for contract return. Should the per-  
40 son willfully refuse to acknowledge receipt of the contract or the contract  
41 is not signed and returned to the board in the designated period of time or if

1 no designated period of time is set by the board, the default time, the board  
2 or its designee 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 No contract shall be issued for the next ensuing year until such time as  
10 the employee's formal written performance evaluation has been completed.

11 If applicable student data relating to Idaho's standards achievement  
12 test has not been received by the district within thirty (30) days of the  
13 deadline to complete the formal written performance evaluation for district  
14 employees, the school district or charter school shall utilize one (1) of  
15 the other objective measures of growth in student achievement as determined  
16 by the board of trustees or governing board, not including Idaho's standards  
17 achievement test, in order to complete the required student achievement com-  
18 ponent of performance evaluations.

19 (2.) In the case of school districts other than elementary school dis-  
20 tricts, to employ a superintendent of schools, for a term not to exceed three  
21 (3) years, who shall be the executive officer of the board of trustees with  
22 such powers and duties as the board may prescribe. The superintendent shall  
23 also act as the authorized representative of the district whenever such is  
24 required, unless some other person shall be named by the board of trustees  
25 to act as its authorized representative. The board of trustees shall con-  
26 duct an annual, written formal evaluation of the work of the superintendent  
27 of the district to be completed no later than June 1. The evaluation shall  
28 indicate: the strengths and weaknesses of the superintendent's job perfor-  
29 mance in the year immediately preceding the evaluation and areas where im-  
30 provement in the superintendent's job performance, in the view of the board  
31 of trustees, is called for; and progress toward the goals set pursuant to  
32 section 33-320, Idaho Code.

33 (a) Such evaluations shall be based on:

34 (i) The evaluation framework approved by the state board of ed-  
35 ucation for school district superintendents that includes, at a  
36 minimum, statewide achievement and growth targets as specified in  
37 subparagraph (ii) of this paragraph; or

38 (ii) An evaluation framework, approved by the state board of edu-  
39 cation or a designee, that includes, at a minimum:

40 1. Statewide achievement and growth targets for K-3 liter-  
41 acy and mathematics, as identified by the state board of edu-  
42 cation;

43 2. Statewide achievement and growth targets for grade 8  
44 English language arts and mathematics, as identified by the  
45 state board of education;

46 3. Statewide achievement and growth targets for college en-  
47 trance exams, as identified by the state board of education;  
48 and

49 4. Two (2) or more achievement and growth targets estab-  
50 lished by the board of trustees.

1        (b) The board of trustees shall provide, as part of the annual evaluation, the achievement and growth targets identified pursuant to paragraph (a) (ii) of this subsection.

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4        (c) The board of trustees shall report the summative performance rating annually to the state department of education.

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6        (3-) To employ through written contract principals who shall hold a valid certificate appropriate to the position for which they are employed, who shall supervise the operation and management of the school in accordance with the policies established by the board of trustees and who shall be under the supervision of the superintendent.

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11        (4-) To employ assistant superintendents and principals for a term not to exceed two (2) years. Service performed under such contract shall be included in meeting the provisions of section 33-515, Idaho Code, as a teacher, and persons eligible for a renewable contract as a teacher shall retain such eligibility. The superintendent, the superintendent's designee, or, in a school district that does not employ a superintendent, the board of trustees, shall conduct an annual, written evaluation of each such employee's performance to be completed no later than June 1.

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

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25        (a) The superintendent or any other duly authorized administrative officer of the school district may recommend the discharge of any certificated employee by filing with the board of trustees written notice specifying the alleged reasons for discharge.

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

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

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

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

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

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45        (g) The chairman of the board or the designee of the chairman shall conduct the hearing.

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47        (h) The board shall cause an electronic record of the hearing to be made 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 admin-  
4 istrative officer shall present evidence to substantiate the allega-  
5 tions 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 its duly authorized adminis-  
15 trative official, shall notify the employee in writing whether the evi-  
16 dence presented at the hearing established the truth of the allegations  
17 and whether the employee is to be retained, immediately discharged, or  
18 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; or

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 unless  
30 the court finds that the action of the board of trustees was:

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

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

33 (iii) Made upon unlawful procedure; or

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

35 (o) Record augmentation on appeal:

36 (i) If, before the date set for any hearing at the district court,  
37 application is made to the court for leave to present additional  
38 evidence and it is shown to the satisfaction of the court that the  
39 additional evidence is material, relates to the validity of the  
40 board action and that there was good cause for failure to present  
41 it in the proceeding before the board, then the court may remand  
42 the matter to the board with direction that the board receive addi-  
43 tional evidence and conduct additional fact-finding;

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

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

1       ~~(6-)~~ To grant an employee's request for voluntary leave of absence.  
2 The board of trustees may delegate ongoing authority to grant an employee's  
3 request for voluntary leave of absence to the district's superintendent or  
4 other designee. Upon the superintendent or designee's granting of an em-  
5 ployee's request for voluntary leave of absence, the board shall ratify or  
6 nullify the action at the next regularly scheduled board meeting.

7       ~~(7-)~~ To delegate to the superintendent or other designee the ongoing  
8 authority to place any employee on a period of involuntary leave of absence  
9 should the superintendent or designee believe that such action is in the best  
10 interest of the district. Upon the superintendent or designee's action to  
11 place a certificated employee on a period of involuntary leave of absence,  
12 the board shall ratify or nullify the action of the superintendent or de-  
13 signee at the next regularly scheduled meeting of the board or at a special  
14 meeting of the board should the next regularly scheduled meeting of the board  
15 not be within a period of twenty-one (21) days from the date of the action.

16       (a) Where there is a criminal court order preventing the certificated  
17 employee from being in the presence of minors or students, preventing  
18 the employee from being in the presence of any other adult individual  
19 employed at the school or detaining the employee in prison or jail, the  
20 certificated employee's involuntary leave of absence shall be without  
21 pay due to the certificated employee's inability to perform the essen-  
22 tial functions of the employee's position. Without such a condition or  
23 situation, the involuntary leave of absence shall be with pay.

24       (i) During the period of involuntary leave of absence without  
25 pay, the salary of the certificated employee will be maintained  
26 in a district-managed account. Should the certificated employee  
27 return to the district for active employment subsequent to the  
28 removal or dismissal of the court order, acquittal or adjudication  
29 of innocence, the district shall remit the salary funds, less the  
30 cost incurred by the district for the substitute hired to replace  
31 the certificated employee. Further, should the certificated em-  
32 ployee return to the district under the provisions established  
33 in this subsection, the district shall arrange to have the cer-  
34 tificated employee credited with the public employee retirement  
35 system of Idaho (PERSI) for the certificated employee's time away  
36 from work during the period of leave of absence.

37       (ii) During the period of involuntary leave of absence, the dis-  
38 trict shall continue to pay the district's portion of monthly  
39 costs associated with the certificated employee's health insur-  
40 ance benefits. The assumption of this payment by the district  
41 shall not alter the certificated employee's financial obliga-  
42 tions, if any, under the policy.

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

47       (c) If the period of involuntary leave of absence is due to the dis-  
48 trict's need to conduct an investigation into the conduct of the cer-  
49 tificated employee, and there are no related criminal investigation(s)  
50 and/or criminal charges of any nature pending, the administration shall

1 complete its investigation within a period of sixty (60) working days.  
2 On or before the sixtieth working day, the administrative leave shall  
3 either cease and the certificated employee shall be returned to his  
4 position of employment or the administration shall advance a personnel  
5 recommendation to the board of trustees. If a recommendation is ad-  
6 vanced, the involuntary leave of absence shall continue until such time  
7 as the district board has made its decision in regard to the personnel  
8 recommendation, with such decision effectively concluding the involun-  
9 tary leave of absence. If a related criminal investigation is occurring  
10 and/or criminal charges are pending, the district shall not be bound  
11 to any limitation as to the duration of involuntary leave of absence.  
12 The timelines established in this section may be waived or modified by  
13 mutual agreement.

14 SECTION 2. That Section 33-5206, Idaho Code, be, and the same is hereby  
15 amended to read as follows:

16 33-5206. REQUIREMENTS AND PROHIBITIONS OF A PUBLIC CHARTER  
17 SCHOOL. (1) In addition to any other requirements imposed in this chapter, a  
18 public charter school shall be nonsectarian in its programs, affiliations,  
19 admission policies, employment practices, and all other operations, shall  
20 not charge tuition, levy taxes or issue bonds, and shall not discriminate  
21 against any student on any basis prohibited by the federal or state constitu-  
22 tions or any federal, state or local law. Public charter schools shall com-  
23 ply with the federal individuals with disabilities education act. Admission  
24 to a public charter school shall not be determined according to the place of  
25 residence of the student, or of the student's parent or guardian within the  
26 district, except that a new~~r~~ replication or conversion public charter school  
27 established under the provisions of this chapter shall adopt and maintain a  
28 policy giving admission preference to students who reside within the con-  
29 tiguous and compact primary attendance area of that public charter school.

30 (2) No board of trustees shall require any employee of the school dis-  
31 trict to be involuntarily assigned to work in a public charter school.

32 (3) Certified teachers in a public charter school shall be considered  
33 public school teachers. Educational experience shall accrue for service in  
34 a public charter school and such experience shall be counted by any school  
35 district for any teacher who has been employed in a public charter school.  
36 The staff of the public charter school shall be considered a separate unit  
37 for the purposes of collective bargaining.

38 (4) Employment of charter school teachers and administrators shall be  
39 on written contract conditioned upon a valid certificate being held by such  
40 professional personnel at the time of entering upon the duties thereunder.

41 (5) No board of trustees shall require any student enrolled in the  
42 school district to attend a public charter school.

43 (6) Authorized chartering entities may establish reasonable pre-open-  
44 ing requirements or conditions to monitor the start-up progress of newly  
45 approved public charter schools and ensure that they are prepared to open  
46 smoothly on the date agreed, and to ensure that each school meets all build-  
47 ing, health, safety, insurance and other legal requirements for school  
48 opening.

1 (7) Each public charter school shall annually submit the audit of its  
2 fiscal operations to the authorized chartering entity.

3 (8) A public charter school or the authorized chartering entity may  
4 enter into negotiations to revise a charter or performance certificate at  
5 any time. If a public charter school petitions to revise its charter or  
6 performance certificate, the authorized chartering entity's review of the  
7 revised petition shall be limited in scope solely to the proposed revisions.  
8 Except for public charter schools authorized by a school district board of  
9 trustees, when a non-virtual public charter school submits a proposed char-  
10 ter revision to its authorized chartering entity and such revision includes  
11 a proposal to increase such public charter school's approved student enroll-  
12 ment cap by ten percent (10%) or more, the authorized chartering entity shall  
13 hold a public hearing on such petition. The authorized chartering entity  
14 shall provide the board of the local school district in which the public  
15 charter school is physically located notice in writing of such hearing no  
16 later than thirty (30) days prior to the hearing. The public hearing shall  
17 include any oral or written comments that an authorized representative of  
18 the school district in which the public charter school is physically located  
19 may provide regarding the impact of the proposed charter revision upon the  
20 school district. Such public hearing shall also include any oral or written  
21 comments that any petitioner may provide regarding the impact of the pro-  
22 posed charter revision upon such school district.

23 (9) When a charter is nonrenewed pursuant to the provisions of section  
24 33-5209B, Idaho Code, revoked pursuant to section 33-5209C, Idaho Code, or  
25 the board of directors of the public charter school terminates the charter,  
26 the assets of the public charter school remaining after all debts of the pub-  
27 lic charter school have been satisfied must be returned to the authorized  
28 chartering entity for distribution in accordance with applicable law.

29 (10) Public charter schools may contract with educational services  
30 providers subject to the following provisions:

31 (a) Educational services providers, whether for-profit or nonprofit,  
32 shall be third-party entities separate from the public charter schools  
33 with which they contract. Educational services providers shall not be  
34 considered governmental entities.

35 (b) No more than one-third (1/3) of the public charter school's board  
36 membership may be comprised of nonprofit educational services provider  
37 representatives. Nonprofit educational services provider repre-  
38 sentatives may not be employees of the public charter school or the  
39 educational services provider and may not hold office as president or  
40 treasurer on the public charter school's board. For-profit educational  
41 services providers may not have representatives on the public charter  
42 school's board of directors.

43 (c) Public charter school board of director members shall annually dis-  
44 close any existing and potential conflicts of interest, pecuniary or  
45 otherwise, with affiliated educational services providers.

46 (d) Charter holders shall retain responsibility for academic, fiscal  
47 and organizational operations and outcomes of the school and may not re-  
48 linquish this responsibility to any other entity.

49 (e) Contracts must ensure that school boards retain the right to termi-  
50 nate the contract for failure to meet defined performance standards.

1 (f) Contracts must ensure that assets purchased by educational ser-  
2 vices providers on behalf of the school, using public funds, shall  
3 remain assets of the school. The provisions of this paragraph shall  
4 not prevent educational services providers from acquiring assets using  
5 revenue acquired through management fees.

6 (g) Charter holders shall consult legal counsel independent of the  
7 party with whom they are contracting for purposes of reviewing the  
8 school's management contract and facility lease or purchase agreements  
9 to ensure compliance with applicable state and federal law, including  
10 requirements that state entities not enter into contracts that obligate  
11 them beyond the terms of any appropriation of funds by the state legis-  
12 lature.

13 (h) Charter holders must ensure that their facility contracts are sepa-  
14 rate from any and all management contracts.

15 (i) Prior to approval of the charter petition indicating the school  
16 board's intention to contract with an educational services provider,  
17 authorized chartering entities shall conduct a thorough evaluation of  
18 the academic, financial and organizational outcomes of other schools  
19 that have contracted with the educational services provider and evi-  
20 dence of the educational services provider's capacity to successfully  
21 grow the public charter school while maintaining quality management and  
22 instruction in existing schools.

23 (11) Admission procedures, including provision for overenrollment,  
24 shall provide that the initial admission procedures for a new public charter  
25 school or replication public charter school will be determined by lottery or  
26 other random method, except as otherwise provided herein.

27 (a) If initial capacity is insufficient to enroll all pupils who submit  
28 a timely application, then the admission procedures may provide that  
29 preference shall be given in the following order: first, to children  
30 of founders, provided that this admission preference shall be limited  
31 to not more than ten percent (10%) of the capacity of the public charter  
32 school; second, to siblings of pupils already selected by the lottery  
33 or other random method; third, to pupils seeking to transfer from an-  
34 other Idaho public charter school at which they have been enrolled for  
35 at least one (1) year, provided that this admission preference shall be  
36 subject to an existing written agreement for such preference between  
37 the subject charter schools; fourth, to students residing within the  
38 primary attendance area of the public charter school; and fifth, by an  
39 equitable selection process such as a lottery or other random method.  
40 If so stated in its petition, a new public charter school or replication  
41 public charter school may include the children of full-time employees  
42 of the public charter school within the first priority group subject to  
43 the limitations therein. Otherwise, such children shall be included in  
44 the highest priority group for which they would otherwise be eligible.

45 (b) If capacity is insufficient to enroll all pupils who submit a timely  
46 application for subsequent school terms, then the admission procedures  
47 may provide that preference shall be given in the following order:  
48 first, to pupils returning to the public charter school in the second or  
49 any subsequent year of its operation; second, to children of founders,  
50 provided that this admission preference shall be limited to not more



1 than ten percent (10%) of the capacity of the public charter school;  
 2 third, to siblings of pupils already enrolled in the public charter  
 3 school; fourth, to pupils seeking to transfer from another Idaho pub-  
 4 lic charter school at which they have been enrolled for at least one  
 5 (1) year, provided that this admission preference shall be subject to  
 6 an existing written agreement for such preference between the subject  
 7 charter schools; fifth, to students residing within the primary at-  
 8 tendance area of the public charter school; and sixth, by an equitable  
 9 selection process such as a lottery or other random method. There shall  
 10 be no carryover from year to year of the list maintained to fill vacan-  
 11 cies. A new lottery shall be conducted each year to fill vacancies that  
 12 become available. If so stated in its petition, a public charter school  
 13 may include the following children within the second priority group  
 14 subject to the limitations therein:

15 (i) The children of full-time employees of the public charter  
 16 school; and

17 (ii) Children who attended the public charter school within the  
 18 previous three (3) school years, but who withdrew as a result of  
 19 the relocation of a parent or guardian due to an academic sabbati-  
 20 cal, employer or military transfer or reassignment.

21 Otherwise, such children shall be included in the highest priority  
 22 group for which they would otherwise be eligible.

23 (12) Public charter schools shall comply with section 33-119, Idaho  
 24 Code, as it applies to secondary school accreditation.

25 (13) Public charter school students shall be tested with the same stan-  
 26 dardized tests as other Idaho public school students.

27 (14) A public charter school's board of directors shall conduct an an-  
 28 annual evaluation of the chief administrator of the public charter school.

29 (a) The evaluation required by this subsection shall be based on:

30 (i) The evaluation framework approved by the state board of edu-  
 31 cation for charter school administrators that includes, at a mini-  
 32 imum, statewide achievement and growth targets as specified in sub-  
 33 paragraph (ii) of this paragraph; or

34 (ii) An evaluation framework, approved by the state board of edu-  
 35 cation or a designee, that includes, at a minimum:

36 1. Statewide achievement and growth targets for K-3 liter-  
 37 acy and mathematics, as identified by the state board of edu-  
 38 cation;

39 2. Statewide achievement and growth targets for grade 8  
 40 English language arts and mathematics, as identified by the  
 41 state board of education;

42 3. Statewide achievement and growth targets for college en-  
 43 trance exams, as identified by the state board of education;  
 44 and

45 4. Two (2) or more achievement and growth targets estab-  
 46 lished by the board of directors.

47 (b) The board of directors shall provide, as part of the annual evalu-  
 48 ation, the achievement and growth targets identified pursuant to para-  
 49 graph (a) (ii) of this subsection.

1     (c) The board of directors shall report the summative performance rat-  
2     ing annually to the state department of education.