

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 317

BY EDUCATION COMMITTEE

AN ACT

1 RELATING TO EDUCATION; AMENDING SECTION 33-513, IDAHO CODE, TO ESTABLISH
2 PROVISIONS RELATING TO A WRITTEN EVALUATION OF CERTAIN EMPLOYEE'S
3 PERFORMANCE, TO CORRECT A CODIFIER'S ERROR AND TO MAKE TECHNICAL COR-
4 RECTIONS; AMENDING SECTION 33-514, IDAHO CODE, TO REVISE PROVISIONS
5 RELATING TO A CATEGORY 3 CONTRACT AND TO REVISE PROVISIONS RELATING TO
6 CERTAIN WRITTEN EVALUATIONS; AND AMENDING SECTION 33-515, IDAHO CODE,
7 TO REVISE PROVISIONS RELATING TO A CERTAIN EVALUATION AFTER THE THIRD
8 FULL YEAR OF EMPLOYMENT.
9

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

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

13 33-513. PROFESSIONAL PERSONNEL. The board of trustees of each school
14 district, including any specially chartered district, shall have the fol-
15 lowing powers and duties:

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

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

41 2. In the case of school districts other than elementary school dis-
42 tricts, to employ a superintendent of schools for a term not to exceed three

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

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

16 4. To employ assistant superintendents and principals for a term not
17 to exceed two (2) years. Service performed under such contract shall be in-
18 cluded in meeting the provisions of section 33-515, Idaho Code, as a teacher
19 and persons eligible for a renewable contract as a teacher shall retain
20 such eligibility. The superintendent, the superintendent's designee, or
21 in a school district that does not employ a superintendent, the board of
22 trustees, shall conduct an annual, written evaluation of each such em-
23 ployee's performance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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 for
37 the following year, the certificated employee shall be provided a writ-
38 ten statement of reasons for non-reemployment by no later than May 25.
39 No property rights shall attach to a category 2 contract and therefore
40 the employee shall not be entitled to a review by the local board of the
41 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.
44 ~~District procedures shall require at least one (1) evaluation prior to~~
45 ~~the beginning of the second semester of the school year and the results~~
46 ~~of any such evaluation shall be made a matter of record in the employee's~~
47 ~~personnel file.~~ When any such employee's work is found to be unsatis-
48 factory a defined period of probation shall be established by the board,
49 but in no case shall a probationary period be less than eight (8) weeks.

1 After the probationary period, action shall be taken by the board as
 2 to whether the employee is to be retained, immediately discharged,
 3 discharged upon termination of the current contract or reemployed at
 4 the end of the contract term under a continued probationary status.
 5 Notwithstanding the provisions of sections 67-2344 and 67-2345, Idaho
 6 Code, a decision to place certificated personnel on probationary status
 7 may be made in executive session and the employee shall not be named in
 8 the minutes of the meeting. A record of the decision shall be placed
 9 in the employee's personnel file. This procedure shall not preclude
 10 recognition of unsatisfactory work at a subsequent evaluation and the
 11 establishment of a reasonable period of probation. In all instances,
 12 the employee shall be duly notified in writing of the areas of work which
 13 are deficient, including the conditions of probation. Each such cer-
 14 tificated employee on a category 3 contract shall be given notice, in
 15 writing, whether he or she will be reemployed for the next ensuing year.
 16 Such notice shall be given by the board of trustees no later than the
 17 twenty-fifth day of May of each such year. If the board of trustees has
 18 decided not to reemploy the certificated employee, then the notice must
 19 contain a statement of reasons for such decision and the employee shall,
 20 upon request, be given the opportunity for an informal review of such
 21 decision by the board of trustees. The parameters of an informal review
 22 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~~ one (21) written evaluations in each
 31 of 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 sub-~~
 33 ~~section (4) shall not apply to employees on a category 1 contract which shall~~
 34 be completed no later than May 1 of each year. The evaluation shall include
 35 a minimum of two (2) documented observations, one (1) of which shall be com-
 36 pleted prior to January 1 of each year. The requirement to provide at least
 37 one (1) written evaluation does not exclude additional evaluations that may
 38 be performed. No civil action for money damages shall arise for failure to
 39 comply with the provisions of this subsection.

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

42 33-515. ISSUANCE OF RENEWABLE CONTRACTS. (1) During the third full
 43 year of continuous employment by the same school district, including any
 44 specially chartered district, each certificated employee named in subsec-
 45 tion (16) of section 33-1001, Idaho Code, and each school nurse and school
 46 librarian shall be evaluated for a renewable contract and shall, upon having
 47 been offered a contract for the next ensuing year, having given notice of
 48 acceptance of renewal and upon signing a contract for a fourth full year, be

1 placed on a renewable contract status with said school district subject to
2 the provisions included in this chapter.

3 (2) After the third full year of employment and at least once annu-
4 ally, the performance of each such certificated employee, school nurse, or
5 school librarian shall be evaluated according to criteria and procedures
6 established by the board of trustees in accordance with general guidelines
7 approved by the state board of education. Such an evaluation shall be com-
8 pleted no later than May 1 of each year. The evaluation shall include a min-
9 imum of two (2) documented observations, one (1) of which shall be completed
10 prior to January 1 of each year. Except as otherwise provided, that person
11 shall have the right to automatic renewal of contract by giving notice, in
12 writing, of acceptance of renewal. Such notice shall be given to the board
13 of trustees of the school district then employing such person not later than
14 the first day of June preceding the expiration of the term of the current con-
15 tract. Except as otherwise provided by this paragraph, the board of trustees
16 shall notify each person entitled to be employed on a renewable contract of
17 the requirement that such person must give the notice hereinabove and that
18 failure to do so may be interpreted by the board as a declination of the right
19 to automatic renewal or the offer of another contract. Such notification
20 shall be made, in writing, not later than the fifteenth day of May, in each
21 year, except to those persons to whom the board, prior to said date, has sent
22 proposed contracts for the next ensuing year, or to whom the board has given
23 the notice required by this section.

24 (3) Any contract automatically renewed under the provisions of this
25 section shall be for the same length as the term stated in the current con-
26 tract and at a salary no lower than that specified therein, to which shall
27 be added such increments as may be determined by the statutory or regulatory
28 rights of such employee by reason of training, service, or performance, ex-
29 cept where a board of trustees has declared a financial emergency pursuant
30 to section 33-522, Idaho Code.

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

41 (5) Before a board of trustees can determine not to renew for reasons of
42 an unsatisfactory report of the performance of any certificated person whose
43 contract would otherwise be automatically renewed, or to renew the contract
44 of any such person at a reduced salary, such person shall be entitled to a
45 reasonable period of probation. This period of probation shall be preceded
46 by a written notice from the board of trustees with reasons for such pro-
47 bationary period and with provisions for adequate supervision and evalua-
48 tion of the person's performance during the probationary period. Such pe-
49 riod of probation shall not affect the person's renewable contract status.
50 Consideration of probationary status for certificated personnel is consid-

1 eration of the status of an employee within the meaning of section 67-2345,
2 Idaho Code, and may be held in executive session. If the consideration re-
3 sults in probationary status, the individual on probation shall not be named
4 in the minutes of the meeting. A record of the decision shall be placed in the
5 teacher's personnel file.

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

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

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

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

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

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

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

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

45 (g) The chairman of the board of trustees or the designee of the chair-
46 man shall conduct the hearing.

47 (h) The board of trustees shall cause an electronic record of the hear-
48 ing to be made or shall employ a competent reporter to take stenographic
49 or stenotype notes of all the testimony at the hearing. A transcript of

1 the hearing shall be provided at cost by the board of trustees upon re-
2 quest of the employee.

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

6 (j) The employees may produce evidence to refute the reduction. Any
7 witness presented by the superintendent or by the employees shall be
8 subject to cross-examination. The board of trustees may also examine
9 witnesses and be represented by counsel.

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

14 (l) Within seven (7) days following the close of the hearing, the board
15 of trustees shall determine and, acting through its duly authorized ad-
16 ministrative official, shall notify the employees in writing whether
17 the evidence presented at the hearing established the need for the ac-
18 tion taken.

19 The due process hearing pursuant to this subsection (7) shall not be required
20 if the board of trustees and the local education association reach an agree-
21 ment on issues agreed upon pursuant to section 33-522(3), Idaho Code.

22 (8) If the board of trustees, for reasons other than unsatisfactory
23 service, for the ensuing contract year, determines to change the length of
24 the term stated in the current contract, reduce the salary or not renew the
25 contract of a certificated person whose contract would otherwise be automat-
26 ically renewed, nothing herein shall require a probationary period.