

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 515

BY EDUCATION COMMITTEE

AN ACT

1 RELATING TO PROFESSIONAL PERSONNEL OF SCHOOL DISTRICTS; AMENDING SECTION
2 33-513, IDAHO CODE, TO PROVIDE FOR FORMAL WRITTEN PERFORMANCE EVALU-
3 ATIONS, TO PROVIDE WHEN A SCHOOL DISTRICT SHALL BE EXCUSED FROM CON-
4 DUCTING FORMAL WRITTEN PERFORMANCE EVALUATIONS, TO PROVIDE FOR WRITTEN
5 EVALUATIONS OF PRINCIPALS AND ASSISTANT SUPERINTENDENTS, AND TO MAKE
6 TECHNICAL CORRECTIONS; AMENDING SECTION 33-514, IDAHO CODE, TO MAKE A
7 DATE CHANGE AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION
8 33-515, IDAHO CODE, TO MAKE A DATE CHANGE AND TO MAKE TECHNICAL CORREC-
9 TIONS.
10

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

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

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

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

1 son willfully refuse to acknowledge receipt of the contract or the contract
2 is not signed and returned to the board in the designated period of time or if
3 no designated period of time is set by the board, the default time, the board
4 or its designee may declare the position vacant.

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

11 No contract shall be issued for the next ensuing year until such time as
12 the employee's formal written performance evaluation has been completed.

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

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

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

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

47 5. To suspend, grant leave of absence, place on probation or discharge
48 certificated professional personnel for a material violation of any lawful
49 rules or regulations of the board of trustees or of the state board of edu-
50 cation, or for any conduct which could constitute grounds for revocation of

1 a teaching certificate. Any certificated professional employee, except the
2 superintendent, may be discharged during a contract term under the following
3 procedures:

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (i) That the findings of fact are not based upon any substantial,
 2 competent evidence;
 3 (ii) That the board of trustees has acted without jurisdiction or
 4 in excess of its authority; or
 5 (iii) That the findings by the board of trustees as a matter of law
 6 do not support the decision.
- 7 (n) The determination of the board of trustees shall be affirmed unless
 8 the court finds that the action of the board of trustees was:
 9 (i) In violation of constitutional or statutory provisions;
 10 (ii) In excess of the statutory authority of the board;
 11 (iii) Made upon unlawful procedure; or
 12 (iv) Arbitrary, capricious or an abuse of discretion.
- 13 (o) Record augmentation on appeal:
 14 (i) If, before the date set for any hearing at the district court,
 15 application is made to the court for leave to present additional
 16 evidence and it is shown to the satisfaction of the court that the
 17 additional evidence is material, relates to the validity of the
 18 board action and that there was good cause for failure to present
 19 it in the proceeding before the board, then the court may remand
 20 the matter to the board with direction that the board receive addi-
 21 tional evidence and conduct additional fact-finding;
 22 (ii) Any party desiring to augment the transcript or record may
 23 file a motion in the same manner and pursuant to the same procedure
 24 for augmentation of the record in appeals to the supreme court; and
 25 (iii) The board may modify its action by reason of the additional
 26 evidence and shall file any modifications, new findings or deci-
 27 sions with the reviewing court.

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

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

- 43 (a) Where there is a criminal court order preventing the certificated
 44 employee from being in the presence of minors or students, preventing
 45 the employee from being in the presence of any other adult individual
 46 employed at the school or detaining the employee in prison or jail, the
 47 certificated employee's involuntary leave of absence shall be without
 48 pay due to the certificated employee's inability to perform the essen-
 49 tial functions of the employee's position. Without such a condition or
 50 situation, the involuntary leave of absence shall be with pay.

1 (i) During the period of involuntary leave of absence without
2 pay, the salary of the certificated employee will be maintained
3 in a district_managed account. Should the certificated employee
4 return to the district for active employment subsequent to the
5 removal or dismissal of the court order, acquittal or adjudication
6 of innocence, the district shall remit the salary funds, less the
7 cost incurred by the district for the substitute hired to replace
8 the certificated employee. Further, should the certificated em-
9 ployee return to the district under the provisions established
10 in this subsection, the district shall arrange to have the cer-
11 tificated employee credited with the public employee retirement
12 system of Idaho (PERSI) for the certificated employee's time away
13 from work during the period of leave of absence.

14 (ii) During the period of involuntary leave of absence, the dis-
15 trict shall continue to pay the district's portion of monthly
16 costs associated with the certificated employee's health insur-
17 ance benefits. The assumption of this payment by the district
18 shall not alter the certificated employee's financial obliga-
19 tions, if any, under the policy.

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

24 (c) If the period of involuntary leave of absence is due to the dis-
25 trict's need to conduct an investigation into the conduct of the cer-
26 tificated employee, and there are no related criminal investigation(s)
27 and/or criminal charges of any nature pending, the administration shall
28 complete its investigation within a period of sixty (60) working days.
29 On or before the sixtieth working day, the administrative leave shall
30 either cease and the certificated employee shall be returned to his
31 position of employment or the administration shall advance a personnel
32 recommendation to the board of trustees. If a recommendation is ad-
33 vanced, the involuntary leave of absence shall continue until such time
34 as the district board has made its decision in regard to the personnel
35 recommendation with such decision effectively concluding the involun-
36 tary leave of absence. If a related criminal investigation is occurring
37 and/or criminal charges are pending, the district shall not be bound
38 to any limitation as to the duration of involuntary leave of absence.
39 The timelines established in this section may be waived or modified by
40 mutual agreement.

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

43 33-514. ISSUANCE OF ANNUAL CONTRACTS -- SUPPORT PROGRAMS -- CATE-
44 GORIES OF CONTRACTS -- OPTIONAL PLACEMENT. (1) The board of trustees shall
45 establish criteria and procedures for the supervision and evaluation of
46 certificated employees who are not employed on a renewable contract, as pro-
47 vided for in section 33-515, Idaho Code.

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

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

3 (b) A category 2 contract is for certificated personnel in the first and
4 second years of continuous employment with the same school district.
5 Upon the decision by a local school board not to reemploy the person for
6 the following year, the certificated employee shall be provided a writ-
7 ten statement of reasons for non-reemployment by no later than the first
8 day of July. No property rights shall attach to a category 2 contract
9 and therefore the employee shall not be entitled to a review by the local
10 board of the reasons or decision not to reemploy.

11 (c) A category 3 contract is for certificated personnel during the
12 third year of continuous employment by the same school district. When
13 any such employee's work is found to be unsatisfactory, a defined period
14 of probation shall be established by the board, but in no case shall a
15 probationary period be less than eight (8) weeks. After the probation-
16 ary period, action shall be taken by the board as to whether the employee
17 is to be retained, immediately discharged, discharged upon termination
18 of the current contract or reemployed at the end of the contract term
19 under a continued probationary status. Notwithstanding the provisions
20 of sections 74-205 and 74-206, Idaho Code, a decision to place certifi-
21 cated personnel on probationary status may be made in executive session
22 and the employee shall not be named in the minutes of the meeting. A
23 record of the decision shall be placed in the employee's personnel file.
24 This procedure shall not preclude recognition of unsatisfactory work
25 at a subsequent evaluation and the establishment of a reasonable period
26 of probation. In all instances, the employee shall be duly notified in
27 writing of the areas of work ~~which~~ that are deficient, including the
28 conditions of probation. Each such certificated employee on a category
29 3 contract shall be given notice, in writing, whether he or she will be
30 reemployed for the next ensuing year. Such notice shall be given by the
31 board of trustees no later than the first day of July of each such year.
32 If the board of trustees has decided not to reemploy the certificated
33 employee, then the notice must contain a statement of reasons for such
34 decision and the employee shall, upon request, be given the opportunity
35 for an informal review of such decision by the board of trustees. The
36 parameters of an informal review shall be determined by the local board.

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

44 (4) There shall be a minimum of one (1) written evaluation in each of
45 the annual contract years of employment, which shall be completed no later
46 than ~~May~~ June 1 of each year. The evaluation shall include a minimum of two
47 (2) documented observations, one (1) of which shall be completed prior to
48 January 1 of each year. The requirement to provide at least one (1) written
49 evaluation does not exclude additional evaluations that may be performed.

1 No civil action for money damages shall arise for failure to comply with the
2 provisions of this subsection.

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

5 33-515. ISSUANCE OF RENEWABLE CONTRACTS. (1) During the third full
6 year of continuous employment by the same school district, including any
7 specially chartered district, each certificated employee named in subsec-
8 tion (24) of section 33-1001, Idaho Code, and each school nurse and school
9 librarian shall be evaluated for a renewable contract and shall, upon hav-
10 ing been offered a contract for the next ensuing year, and upon signing and
11 timely returning a contract for a fourth full year, be placed on a renewable
12 contract status with said school district entitling such individual to the
13 right to automatic renewal of contract, subject to the provisions included
14 in this chapter, provided that instructional staff who have not obtained
15 a professional endorsement under section 33-1201A, Idaho Code, may not
16 be placed on a renewable contract status, provided however, if the career
17 ladder pursuant to section 33-1004B, Idaho Code, is not funded, then a pro-
18 fessional endorsement shall not be required.

19 (2) At least once annually, the performance of each renewable contract
20 certificated employee, school nurse, or school librarian shall be evaluated
21 according to criteria and procedures established by the board of trustees in
22 accordance with general guidelines approved by the state board of education.
23 Such an evaluation shall be completed no later than ~~May~~ June 1 of each year.
24 The evaluation shall include a minimum of two (2) documented observations,
25 one (1) of which shall be completed prior to January 1 of each year.

26 (3) Any contract automatically renewed under the provisions of this
27 section may be renewed for a shorter term, longer term or the same length
28 of term as stated in the current contract and at a greater, lesser or equal
29 salary as that stated in the current contract. Absent the board's applica-
30 tion of a formal reduction in force, renewals of standard teacher contracts
31 may be for a shorter term, longer term or the same length of term as stated
32 in the current standard teacher contract and at a greater, lesser or equal
33 salary, and shall be uniformly applied to all employees based upon the dis-
34 trict's adopted salary schedule to the extent allowable in section 33-1004E,
35 Idaho Code.

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

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

43 (c) Unless otherwise negotiated and ratified by both parties pursuant
44 to sections 33-1271, et seq., Idaho Code, standard teacher renewals for
45 terms shorter in length than that stated in the current standard con-
46 tract of renewable certificated employees, should be considered and im-
47 plemented only after the district has determined that the salary-based
48 apportionment reimbursement that it estimates it will receive for the

1 ensuing school year is less than the sum the district would otherwise be
2 paying for salaries for certificated professional employees.

3 (4) Nothing in this section shall prevent the board of trustees from of-
4 fering a renewed contract increasing the salary of any certificated person,
5 or from reassigning an administrative employee to a nonadministrative posi-
6 tion with appropriate reduction of salary from the preexisting salary level.
7 In the event the board of trustees reassigns an administrative employee to a
8 nonadministrative position, the board shall give written notice to the em-
9 ployee ~~which~~ that contains a statement of the reasons for the reassignment.
10 The employee, upon written request to the board, shall be entitled to an in-
11 formal review of that decision. The process and procedure for the informal
12 review shall be determined by the local board of trustees.

13 (5) Before a board of trustees can determine not to renew for reasons of
14 an unsatisfactory report of the performance of any certificated person whose
15 contract would otherwise be automatically renewed, such person shall be en-
16 titled to a reasonable period of probation. This period of probation shall
17 be preceded by a written notice from the board of trustees with reasons for
18 such probationary period and with provisions for adequate supervision and
19 evaluation of the person's performance during the probationary period. Such
20 period of probation shall not affect the person's renewable contract status.
21 Consideration of probationary status for certificated personnel is consid-
22 eration of the status of an employee within the meaning of section 74-206,
23 Idaho Code, and may be held in executive session. If the consideration re-
24 >sults in probationary status, the individual on probation shall not be named
25 in the minutes of the meeting. A record of the decision shall be placed in the
26 teacher's personnel file.

27 (6) If the board of trustees takes action to immediately discharge
28 or discharge upon termination of the current contract a certificated per-
29 son whose contract would otherwise be automatically renewed, the action
30 of the board shall be consistent with the procedures specified in section
31 33-513(5), Idaho Code, and furthermore, the board shall notify the employee
32 in writing whether there is just and reasonable cause not to renew the con-
33 tract or to reduce the salary of the affected employee, and if so, what
34 reasons it relied upon in that determination.

35 (7) If the board of trustees takes action after the declaration of a fi-
36 nancial emergency pursuant to section 33-522, Idaho Code, and such action is
37 directed at more than one (1) certificated employee, and if mutually agreed
38 to by both parties, a single informal review shall be conducted. Without
39 mutual consent of both parties, the board of trustees shall use the follow-
40 ing procedure to conduct a single due process hearing within sixty-seven
41 (67) days of the declaration of financial emergency pursuant to section
42 33-522(2), Idaho Code, or on or before June 22, whichever shall occur first:

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

48 (b) Upon receipt of such notice, the board of trustees, acting through
49 its duly authorized administrative official, shall give the affected
50 employees written notice of the reductions and the recommendation of

1 the change in the length of the term stated in the current contract or
2 the reduction of salary, along with written notice of a hearing be-
3 fore the board of trustees prior to any determination by the board of
4 trustees.

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

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

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

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

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

17 (h) The board of trustees shall cause an electronic record of the hear-
18 ing to be made or shall employ a competent reporter to take stenographic
19 or stenotype notes of all the testimony at the hearing. A transcript of
20 the hearing shall be provided at cost by the board of trustees upon re-
21 quest of the employee.

22 (i) At the hearing, the superintendent or other duly authorized admin-
23 istrative officer shall present evidence to substantiate the reduction
24 contained in such notice.

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

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

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

38 The due process hearing pursuant to this subsection shall not be required if
39 the board of trustees and the local education association reach an agreement
40 on issues agreed upon pursuant to section 33-522(3), Idaho Code.

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

46 (9) If the board of trustees, for reasons other than unsatisfactory
47 service, for the ensuing contract year, determines to change the length
48 of the term stated in the current contract or reduce the salary of a cer-
49 tificated person whose contract would otherwise be automatically renewed,
50 nothing herein shall require any individualized due process proceeding. In

1 such circumstance, the board shall hold a single informal review for all im-
2 pacted employees. The process and procedure for the single informal review
3 shall be determined by the local board of trustees.