

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 564

BY EDUCATION COMMITTEE

AN ACT

1 RELATING TO EDUCATION; AMENDING SECTION 33-1209, IDAHO CODE, TO REVISE  
2 PROVISIONS RELATING TO INVESTIGATION BY THE PROFESSIONAL STANDARDS  
3 COMMISSION, TO PROVIDE FOR INVESTIGATIONS OF UNETHICAL CONDUCT, TO  
4 REVISE PROVISIONS RELATING TO AN ALLEGATION, TO REVISE PROVISIONS RE-  
5 LATING TO NOTIFICATION, TO REVISE PROVISIONS RELATING TO A HEARING  
6 PANEL'S SUBMISSION, TO ESTABLISH PROVISIONS RELATING TO CERTAIN NOTI-  
7 FICATION BY THE PROFESSIONAL STANDARDS COMMISSION AND TO MAKE A TECH-  
8 NICAL CORRECTION; AND AMENDING SECTION 33-1210, IDAHO CODE, TO REVISE  
9 PROVISIONS RELATING TO A SIGNED STATEMENT FROM APPLICANTS, TO DEFINE  
10 CERTAIN TERMS, TO PROVIDE THAT A SCHOOL DISTRICT SHALL REQUEST CERTAIN  
11 INFORMATION FROM AN APPLICANT'S PAST PUBLIC SCHOOL EMPLOYERS, TO REVISE  
12 PROVISIONS RELATING TO A HIRING DISTRICT'S REQUEST, TO REVISE PROVI-  
13 SIONS RELATING TO EMPLOYMENT ON A CONDITIONAL BASIS, TO PROVIDE FOR  
14 EXCEPTIONS, TO ELIMINATE A REFERENCE TO COLLECTIVE BARGAINING AGREE-  
15 MENT AND INDIVIDUAL EMPLOYMENT CONTRACT, TO REVISE PROVISIONS RELATING  
16 TO THE EXPUNGEMENT OF CERTAIN INFORMATION FROM CERTAIN DOCUMENTS, TO  
17 REVISE A DATE, TO REVISE PROVISIONS RELATING TO RULES AND TO MAKE A TECH-  
18 NICAL CORRECTION.  
19

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

21 SECTION 1. That Section 33-1209, Idaho Code, be, and the same is hereby  
22 amended to read as follows:

23 33-1209. PROCEEDINGS TO REVOKE, SUSPEND, DENY OR PLACE REASONABLE  
24 CONDITIONS ON A CERTIFICATE -- LETTERS OF REPRIMAND -- COMPLAINT -- SUBPOENA  
25 POWER -- HEARING. (1) The professional standards commission may conduct in-  
26 vestigations on any signed allegation of unethical ~~practice~~ conduct of any  
27 teacher brought by:

28 (a) An individual with a substantial interest in the matter, except a  
29 student in an Idaho public school; or

30 (b) A local board of trustees.

31 The allegation shall state the specific ground or grounds for the allegation  
32 of unethical conduct that could lead to a possible revocation, suspension,  
33 placing reasonable conditions on the certificate, or issuance of a letter  
34 of reprimand. Upon receipt of a written and signed allegation of unethical  
35 misconduct, the chief certification officer, in conjunction with the attor-  
36 ney general and the professional standards commission investigator, shall  
37 conduct a review of the allegation using established guidelines to determine  
38 whether to remand the issue to the school district to be resolved locally  
39 or to open an investigation and forward the case to the professional stan-  
40 dards commission. Within fourteen (14) days of the decision to forward the  
41 case, the chief certification officer shall notify the complainant and the  
42 teacher, in writing, that an investigation will be conducted and the teacher

1 shall be afforded an opportunity to respond to the allegation verbally and in  
2 writing prior to the issuance of the complaint. The executive committee of  
3 the professional standards commission shall review the circumstances of the  
4 forwarded case at one (1) of the two (2) next regularly scheduled meetings,  
5 and determine whether probable cause exists to warrant the filing of a com-  
6 plaint and the requesting of a hearing.

7 (2) Proceedings to revoke or suspend any certificate issued under sec-  
8 tion 33-1201, Idaho Code, or to issue a letter of reprimand or place reason-  
9 able conditions on the certificate shall be commenced by a written complaint  
10 against the holder thereof. Such complaint shall be made by the chief certi-  
11 fication officer stating the ground or grounds for issuing a letter of rep-  
12 rimand, placing reasonable conditions on the certificate, or for revocation  
13 or suspension and proposing that a letter of reprimand be issued, reason-  
14 able conditions be placed on the certificate, or the certificate be revoked  
15 or suspended. A copy of the complaint shall be served upon the certificate  
16 holder, either by personal service or by certified mail, within thirty (30)  
17 days of determination by the executive committee or such other time agreed to  
18 by the teacher and the chief certification officer.

19 (3) Not more than thirty (30) days after the date of service of any  
20 complaint, the person complained against may request, in writing, a hearing  
21 upon the complaint. Any such request shall be made and addressed to the state  
22 superintendent of public instruction; and if no request for hearing is made,  
23 the grounds for suspension, revocation, placing reasonable conditions on  
24 the certificate, or issuing a letter of reprimand stated in the complaint  
25 shall be deemed admitted. Upon a request for hearing, the chief certifi-  
26 cation officer shall give notice, in writing, to the person requesting the  
27 hearing, which notice shall state the time and place of the hearing and which  
28 shall occur not more than ninety (90) days from the request for hearing or  
29 such other time agreed to by the teacher and the chief certification officer.  
30 The time of such hearing shall not be less than five (5) days from the date of  
31 notice thereof. Any such hearing shall be informal and shall conform with  
32 chapter 52, title 67, Idaho Code. The hearing will be held within the school  
33 district in which any teacher complained of shall teach, or at such other  
34 place deemed most convenient for all parties.

35 (4) Any such hearing shall be conducted by three (3) or more panel mem-  
36 bers appointed by the chairman of the professional standards commission, a  
37 majority of whom shall hold a position of employment the same as the person  
38 complained against. One (1) of the panel members shall serve as the panel  
39 chair. The panel chair shall be selected by the chairman of the professional  
40 standards commission from a list of former members of the professional stan-  
41 dards commission who shall be instructed in conducting administrative hear-  
42 ings. No commission member who participated in the probable cause determi-  
43 nation process in a given case shall serve on the hearing panel. All hear-  
44 ings shall be held with the object of ascertaining the truth. Any person com-  
45 plained against may appear in person and may be represented by legal counsel,  
46 and may produce, examine and cross-examine witnesses, and, if he chooses to  
47 do so, may submit for the consideration of the hearing panel a statement, in  
48 writing, in lieu of oral testimony, but any such statement shall be under  
49 oath and the affiant shall be subject to cross-examination.

1 (5) The state superintendent of public instruction, as authorized by  
2 the state board of education, has the power to issue subpoenas and compel  
3 the attendance of witnesses and compel the production of pertinent papers,  
4 books, documents, records, accounts and testimony. The state board or its  
5 authorized representative may, if a witness refuses to attend or testify or  
6 to produce any papers required by such subpoena, report to the district court  
7 in and for the county in which the proceeding is pending, by petition, set-  
8 ting forth that a due notice has been given of the time and place of atten-  
9 dance of the witnesses, or the production of the papers, that the witness has  
10 been properly summoned, and that the witness has failed and refused to at-  
11 tend or produce the papers required by this subpoena before the board, or its  
12 representative, or has refused to answer questions propounded to him in the  
13 course of the proceedings, and ask for an order of the court compelling the  
14 witness to attend and testify and produce the papers before the board. The  
15 court, upon the petition of the board, shall enter an order directing the  
16 witness to appear before the court at a time and place to be fixed by the court  
17 in the order, the time to be not more than ten (10) days from the date of the  
18 order, and then and there shall show cause why he has not attended and testi-  
19 fied or produced the papers before the board or its representative. A copy of  
20 the order shall be served upon the witness. If it shall appear to the court  
21 that the subpoena was regularly issued by the board and regularly served, the  
22 court shall thereupon order that the witness appear before the board at the  
23 time and place fixed in the order and testify or produce the required papers.  
24 Upon failure to obey the order, the witness shall be dealt with for contempt  
25 of court. The subpoenas shall be served and witness fees and mileage paid as  
26 allowed in civil cases in the district courts of this state.

27 (6) Within twenty-one (21) days of the conclusion of any hearing  
28 dealing with the revocation, suspension, denial of a certificate, placing  
29 reasonable conditions on the certificate, or issuing a letter of reprimand,  
30 the hearing panel shall submit to the chief certification officer, and to  
31 the person complained against and to the chief administrative officer of the  
32 public school employing the certificate holder, if any, a concise statement  
33 of the proceedings, a summary of the testimony, and any documentary evidence  
34 offered, together with the findings of fact and a decision. The hearing  
35 panel may determine to suspend or revoke the certificate, or the panel may  
36 order that reasonable conditions be placed on the certificate or a letter of  
37 reprimand be sent to the certificate holder, or if there are not sufficient  
38 grounds, the allegation against the certificate holder is dismissed and is  
39 so recorded.

40 (7) Within three (3) days of issuance, the hearing panel's decision  
41 shall be made a permanent part of the record of the certificate holder.  
42 Should the final decision be to place reasonable conditions upon the cer-  
43 tificate holder or a suspension or revocation of the teaching certificate,  
44 the professional standards commission must notify the employing public  
45 school of the hearing panel's decision and to provide notice that such may  
46 negatively impact upon the employment status of the certificated employee.

47 (8) The final decision of the hearing panel shall be subject to judicial  
48 review in accordance with the provisions of chapter 52, title 67, Idaho Code,  
49 in the district court of the county in which the holder of a revoked certifi-  
50 cate has been last employed as a teacher.

1 (9) Whenever any certificate has been revoked, suspended or has had  
 2 reasonable conditions placed upon it, or an application has been denied, the  
 3 professional standards commission may, upon a clear showing that the cause  
 4 constituting grounds for the listed actions no longer exists, issue a valid  
 5 certificate. Provided however, that no certificate shall be issued to any  
 6 person who has been convicted of any crime listed in subsection 2. of section  
 7 33-1208, Idaho Code.

8 (10) For any person certified in another state and applying for certifi-  
 9 cation in Idaho, and for any person previously certified in this state who is  
 10 applying for certification in the event their certification has lapsed or is  
 11 seeking renewal of a current certification, the chief certification officer  
 12 shall deny an application for a new certificate or for a renewal of a cer-  
 13 tificate, regardless of the jurisdiction where such certificate was issued,  
 14 if there are any unsatisfied conditions on such current or previously is-  
 15 sued certificate or if there is any form of pending investigation by a state  
 16 agency concerning the applicant's teaching license or certificate. Pro-  
 17 vided however, the chief certification officer shall not automatically deny  
 18 the application if such person authorized in writing that the chief certifi-  
 19 cation officer and the professional standards commission shall have full  
 20 access to the investigative files concerning the conditions on, or investi-  
 21 gation concerning, such certificate in Idaho or any other state or province.  
 22 Upon review of the information authorized for release by the applicant, the  
 23 chief certification officer shall either grant or deny such application or,  
 24 upon denial and upon written request made by the applicant within thirty  
 25 (30) days of such denial, shall afford the applicant with the procedures set  
 26 forth in subsections (3) through (9) of this section. If the applicant does  
 27 not execute the written authorization discussed herein, reapplication may  
 28 be made once all investigations have been completed and all conditions have  
 29 been satisfied, resulting in a clear certificate from the issuing state or  
 30 province.

31 (11) For the purposes of this section, the term "teacher" shall include  
 32 any individual required to hold a certificate pursuant to section 33-1201,  
 33 Idaho Code.

34 SECTION 2. That Section 33-1210, Idaho Code, be, and the same is hereby  
 35 amended to read as follows:

36 33-1210. INFORMATION ON PAST JOB PERFORMANCE. (1) As used in this sec-  
 37 tion:

38 (a) "Applicant" means an applicant for employment in a certificated or  
 39 noncertificated position who is currently or was previously employed by  
 40 a school district.

41 (b) "Employer" means a school district employer.

42 (2) Before hiring an applicant, a school district shall request the ap-  
 43 plicant to sign a statement:

44 (a) Authorizing the applicant's current and past employers, including  
 45 employers outside of the state of Idaho, to release to the hiring school  
 46 district all information relating to the job performance and/or job re-  
 47 lated conduct, if any, of the applicant and making available to the hir-  
 48 ing school district copies of all documents in the previous employer's  
 49 personnel files established pursuant to sections 33-517 or 33-518,

1 Idaho Code, or investigative or other files, regardless of whether or  
2 not the employee has received notice of the existence of such documen-  
3 tation due to absence from the school or the employee's refusal to sign  
4 such documents, relating to the job performance by the applicant; and

5 (b) Documentation related to the job performance or job related con-  
6 duct of any employee/applicant is defined as and may be limited by the  
7 producing district to include: all annual evaluations, letters of  
8 reprimand, letters of direction, letters of commendation or award, dis-  
9 ciplinary actions and documentation of disciplinary investigations,  
10 recommendations for probation, notices of probation, notices of re-  
11 moval from probation, recommendations for termination or nonrenewal,  
12 notices of termination or nonrenewal, notices from the professional  
13 standards commission of Idaho or any other such similar state agency  
14 of action taken against an individual's certificate and any rebuttal  
15 documentation filed by the employee relative to any of the above docu-  
16 ments. Names of any student or fellow employee complainant, other than  
17 the employee's administrative evaluator or administrative author of  
18 communication to the employee, shall be redacted from such provided  
19 documentation.

20 (c) Releasing the applicant's current and past employers, and employ-  
21 ees acting on behalf of that employer, from any liability for providing  
22 information described in paragraph (a) of this subsection, as provided  
23 in subsection (4) of this section.

24 (3) Before hiring an applicant, a school district shall request in  
25 writing, electronic or otherwise, the applicant's current and past public  
26 school employers, including out-of-state employers, to provide the infor-  
27 mation described in subsection (2) (a) of this section, if any. The request  
28 shall include a copy of the statement signed by the applicant under subsec-  
29 tion (2) of this section.

30 (4) Not later than twenty (20) business days after receiving a request  
31 under subsection (3) of this section, a school district within Idaho shall  
32 provide the information requested and make available to the requesting  
33 school district copies of all documents in the applicant's personnel record  
34 relating to job performance. The school district, or an employee acting on  
35 behalf of the school district, who in good faith discloses information under  
36 this section either in writing, printed material, electronic material or  
37 orally is immune from civil liability for the disclosure. An employer is  
38 presumed to be acting in good faith at the time of the disclosure under this  
39 section unless the evidence establishes one (1) or more of the following:  
40 (a) that the employer knew the information disclosed was false or mislead-  
41 ing; (b) that the employer disclosed the information with reckless disregard  
42 for the truth; or (c) that the disclosure was specifically prohibited by a  
43 state or federal statute.

44 (5) A hiring district shall request from the office of the superinten-  
45 dent of public instruction verification of certification status, any past or  
46 pending violations of the professional code of ethics, any detail as to any  
47 prior or pending conditions placed upon a certificate holder's certificate,  
48 any prior or pending revocation, suspension or the existence of any prior  
49 letters of reprimand and information relating to job performance as estab-

1 lished by the provisions of subsection (11) of this section, if any, for ap-  
2 plicants for certificated employment.

3 (6) A school district shall not hire an applicant who does not sign the  
4 statement described in subsection (2) of this section.

5 (7) School districts may employ applicants on a conditional basis pend-  
6 ing the district's review of information obtained under this section; how-  
7 ever, such employee shall not be issued a standard teacher contract in any  
8 form and shall not have any due process obligations or rights to their po-  
9 sition until such time as the information requested has been obtained and  
10 an employment decision made by the district subsequent to review. Once the  
11 prior employer personnel performance materials have arrived for an individ-  
12 ual conditionally hired, the district will have a period of thirty (30) days  
13 to review the materials and make a decision relating to the employment of  
14 the individual. If the individual is going to be retained and is a certifi-  
15 cated employee, it is at that time that a standard teacher's contract may  
16 be issued. Prior to that time, the district may employ such individual as a  
17 noncontracted long-term substitute teacher, with the same compensation and  
18 benefits as the district would utilize for any other employed long-term sub-  
19 stitute. When requests are sent to out-of-state employers under subsection  
20 (3) of this section, an applicant who has signed the statement described in  
21 subsection (2) of this section shall not be prevented from gaining employ-  
22 ment in Idaho public schools if the laws or policies of that other state pre-  
23 vent documents from being made available to Idaho school districts or if the  
24 out-of-state school district fails or refuses to cooperate with the request.

25 (a) If no documentation is going to be forthcoming from an out-of-state  
26 employer, the Idaho district may initially employ the applicant on a  
27 standard contract and not utilize the conditional basis employment.

28 (b) For new employees with no prior public school work experience or for  
29 applicants whose out-of-state former employers will not release docu-  
30 mentation pursuant to this statute, the district board shall develop a  
31 policy to confirm prior work experience and check references.

32 (8) Information received pursuant to this section shall be used by a  
33 school district only for the purpose of evaluating an applicant's qualifica-  
34 tions for employment in the position for which he or she has applied. Except  
35 as otherwise provided by law, a board member or employee of a school district  
36 shall not disclose the information to any person, other than the applicant,  
37 who is not directly involved in the process of evaluating the applicant's  
38 qualifications for employment. A person who violates the provisions of this  
39 subsection may be civilly liable for damages caused by such violation.

40 (9) Beginning September 1, 2011, the board or an official of a school  
41 district shall not enter into any collective bargaining agreement, individ-  
42 ual employment contract, resignation agreement, severance agreement, or any  
43 other contract or agreement that has the effect of suppressing information  
44 about negative job performance by a present or former employee or of expung-  
45 ing information about that performance or unethical misconduct from any docu-  
46 ments in the previous employer's personnel, investigative or other files  
47 relating to job performance by the applicant. Any provision of a contract  
48 or agreement that is contrary to this subsection is void and unenforceable.  
49 This subsection does not restrict the expungement from a personnel file of  
50 information about alleged verbal or physical abuse or sexual misconduct that

1 has ~~not been substantiated~~ been proven to be a false allegation or untruth-  
2 ful.

3 (10) This section does not prevent a school district from requesting or  
4 requiring an applicant to provide information other than that described in  
5 this section.

6 (11) By September 1, 20112, the state board of education has the author-  
7 ity to and shall adopt rules defining job standards performance and "ver-  
8 bal abuse," "physical abuse," and "sexual misconduct" ~~as used in this sec-~~  
9 ~~tion~~ and "unethical conduct" as defined in the code of ethics for Idaho pro-  
10 fessional educators for application to all certificated and noncertificated  
11 employees. The definitions of job standards performance, verbal and physi-  
12 cal abuse and sexual misconduct adopted by the state board of education must  
13 include the requirement that the school district has made a determination  
14 that there is sufficient information to conclude that the abuse or unethical  
15 ~~misconduct~~ occurred and that the abuse or unethical ~~misconduct~~ resulted in  
16 the employee's leaving his or her position at the school district.