

IN THE SENATE

SENATE BILL NO. 1323

BY EDUCATION COMMITTEE

AN ACT

1 RELATING TO EDUCATION; AMENDING SECTION 33-1208, IDAHO CODE, TO REVISE
2 PROVISIONS REGARDING PERMANENT REVOCATION AND DENIAL OF CERTAIN CER-
3 TIFICATES, TO PROVIDE A CORRECT CODE REFERENCE, AND TO MAKE TECHNICAL
4 CORRECTIONS; AMENDING SECTION 33-512, IDAHO CODE, TO PROVIDE A CORRECT
5 CODE REFERENCE AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING SECTION
6 33-1209, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE.
7

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

9 SECTION 1. That Section 33-1208, Idaho Code, be, and the same is hereby
10 amended to read as follows:

11 33-1208. REVOCATION, SUSPENSION, DENIAL, OR PLACE REASONABLE CONDI-
12 TIONS ON CERTIFICATE -- GROUNDS. (1-) The professional standards commission
13 may deny, revoke, suspend, or place reasonable conditions on any certificate
14 issued or authorized under the provisions of section 33-1201, Idaho Code,
15 upon any of the following grounds:

16 (a-) Gross neglect of duty;

17 (b-) Incompetency;

18 (c-) Breach of the teaching contract;

19 (d-) Making any material statement of fact in the application for a cer-
20 tificate, ~~which~~ that the applicant knows to be false;

21 (e-) Revocation, suspension, denial, or surrender of a certificate in
22 another state for any reason constituting grounds for revocation in
23 this state;

24 (f-) Conviction, finding of guilt, withheld judgment, or suspended
25 sentence, ~~in~~ in this or any other state of a crime involving moral turpi-
26 tude;

27 (g-) Conviction, finding of guilt, withheld judgment, or suspended
28 sentence in this state or any other state for the delivery, manufacture,
29 or production of controlled substances or simulated controlled sub-
30 stances as those terms are defined in section 37-2701, Idaho Code;

31 (h-) A guilty plea or a finding of guilt, notwithstanding the form
32 of the judgment or withheld judgment, in this or any other state, ~~of~~
33 the crime of involuntary manslaughter, section 18-4006 2. ~~or section~~
34 ~~18-4006 3.~~ (2) or (3), Idaho Code;

35 (i-) Any disqualification ~~which~~ that would have been sufficient
36 grounds for refusing to issue or authorize a certificate, if the dis-
37 qualification existed or had been known at the time of its issuance or
38 authorization;

39 (j-) Willful violation of any professional code or standard of ethics
40 or conduct, ~~adopted~~ adopted by the state board of education;

41 (k-) The kidnapping of a child, section 18-4503, Idaho Code;

1 ~~(1-)~~ Conviction, finding of guilt, withheld judgment, or suspended
2 sentence, in this state or any other state of any felony, the commission
3 of which renders the certificated person unfit to teach or otherwise
4 perform the duties of the certificated person's position.

5 ~~(2-)~~ The professional standards commission shall permanently re-
6 voke any certificate issued or authorized under the provisions of section
7 33-1201, Idaho Code, and shall deny the application for issuance of a
8 certificate of a person who pleads guilty to or is found guilty of, notwith-
9 standing the form of the judgment or withheld judgment, any of the following
10 felony offenses ~~against a child~~:

11 ~~(a-)~~ ~~The a~~Aggravated assault of a child, section 18-905, Idaho Code,
12 or ~~the~~ assault with intent to commit a serious felony ~~against a child~~,
13 section 18-909, Idaho Code.

14 ~~(b-)~~ ~~The a~~Aggravated battery of a child, section 18-907, Idaho Code,
15 or ~~the~~ battery with intent to commit a serious felony ~~against a child~~,
16 section 18-911, Idaho Code.

17 ~~(c-)~~ The injury or death of a child, section 18-1501, Idaho Code.

18 ~~(d-)~~ The sexual abuse of a child under sixteen (16) years of age, sec-
19 tion 18-1506, Idaho Code.

20 ~~(e-)~~ The ritualized abuse of a child under eighteen (18) years of age,
21 section 18-1506A, Idaho Code.

22 ~~(f-)~~ The sexual exploitation of a child, section 18-1507, Idaho Code.

23 ~~(g-)~~ Lewd conduct with a child under the age of sixteen (16) years, sec-
24 tion 18-1508, Idaho Code.

25 ~~(h-)~~ The sexual battery of a minor child sixteen (16) or seventeen (17)
26 years of age, section 18-1508A, Idaho Code.

27 ~~(i-)~~ The sale or barter of a child for adoption or other purposes, sec-
28 tion 18-1511, Idaho Code.

29 ~~(j-)~~ ~~The m~~Murder of a child, section 18-4003, Idaho Code, or ~~the~~ volun-
30 tary manslaughter of a child, section 18-4006~~(1-)~~, Idaho Code.

31 ~~(k-)~~ ~~The k~~Kidnapping of a child, section 18-4502, Idaho Code.

32 ~~(l-)~~ ~~The i~~Importation or exportation of a juvenile for immoral purposes
33 Interstate trafficking in prostitution, section 18-5601, Idaho Code.

34 ~~(m-)~~ ~~The a~~Abduction of Utilizing a person under eighteen (18) years of
35 age for prostitution, section 18-5610, Idaho Code.

36 ~~(n-)~~ ~~The r~~Rape of a child, section 18-6101, Idaho Code.

37 The general classes of felonies listed in this subsection ~~2- of this section~~
38 shall include equivalent laws of federal or other state jurisdictions. For
39 the purpose of this subsection, "child" means a minor or juvenile as defined
40 by the applicable state or federal law.

41 ~~(3-)~~ The professional standards commission may investigate and follow
42 the procedures set forth in section 33-1209, Idaho Code, for any allegation
43 of inappropriate conduct as defined in this section, by a holder of a cer-
44 tificate whether or not the holder has surrendered his certificate without a
45 hearing or failed to renew his certificate. In those cases where the holder
46 of a certificate has surrendered or failed to renew his certificate and it
47 was found that inappropriate conduct occurred, the commission shall record
48 such findings in the permanent record of the individual and shall deny the
49 issuance of a teaching certificate.

1 (g) The state superintendent of public instruction may grant an ex-
2 emption from the provisions of this section for an individual building
3 within a district, when the closure of that building, for unforeseen
4 circumstances, does not affect the attendance of other buildings within
5 the district.

6 (h) The state board of education may grant a waiver of the minimum
7 number of instructional hours for a school district when districtwide
8 school closures are necessary as a result of natural occurrences cre-
9 ating unsafe conditions for students. A county or state disaster
10 declaration must have been issued for one (1) or more of the counties
11 in which the school district is located. A waiver request to the state
12 board of education must describe the efforts by the school district to
13 make up lost instructional hours, the range of grades impacted, and the
14 number of hours the school district is requesting be waived.

15 (i) The reduction of instructional hours allowed in paragraphs (f)
16 through (h) of this subsection may not be combined in a single school
17 year.

18 (2) To adopt and carry on, and to provide for the financing of, a to-
19 tal educational program for the district. Such programs in other than el-
20 elementary school districts may include education programs for out-of-school
21 youth and adults, and such districts may provide classes in kindergarten;

22 (3) To provide, or require pupils to be provided with, suitable text-
23 books and supplies, and for advice on textbook selections may appoint a cur-
24 ricular materials adoption committee as provided in section 33-512A, Idaho
25 Code;

26 (4) To protect the morals and health of the pupils;

27 (5) To exclude from school, children not of school age;

28 (6) To prescribe rules for the disciplining of unruly or insubordinate
29 pupils, including rules on student harassment, intimidation and bullying,
30 such rules to be included in a district discipline code adopted by the board
31 of trustees and a summarized version thereof to be provided in writing at the
32 beginning of each school year to the teachers and students in the district
33 in a manner consistent with the student's age, grade and level of academic
34 achievement;

35 (7) To exclude from school, pupils with contagious or infectious dis-
36 eases who are diagnosed or suspected as having a contagious or infectious
37 disease or those who are not immune and have been exposed to a contagious or
38 infectious disease; and to close school on order of the state board of health
39 and welfare or local health authorities;

40 (8) To equip and maintain a suitable library or libraries in the school
41 or schools and to exclude therefrom, and from the schools, all books, tracts,
42 papers, and catechisms of sectarian nature;

43 (9) To determine school holidays. Any listing of school holidays shall
44 include not less than the following: New Year's Day, Memorial Day, Indepen-
45 dence Day, Thanksgiving Day, and Christmas Day. Other days listed in section
46 73-108, Idaho Code, if the same shall fall on a school day, shall be observed
47 with appropriate ceremonies; and any days the state board of education may
48 designate, following the proclamation by the governor, shall be school holi-
49 days;

1 (10) To erect and maintain on each schoolhouse or school grounds a suit-
2 able flagstaff or flagpole, and display thereon the flag of the United States
3 of America on all days, except during inclement weather, when the school is
4 in session; and for each Veterans Day, each school in session shall conduct
5 and observe an appropriate program of at least one (1) class period remember-
6 ing and honoring American veterans;

7 (11) To prohibit entrance to each schoolhouse or school grounds, to pro-
8 hibit loitering in schoolhouses or on school grounds and to provide for the
9 removal from each schoolhouse or school grounds of any individual or indi-
10 viduals who disrupt the educational processes or whose presence is detrimen-
11 tal to the morals, health, safety, academic learning or discipline of the
12 pupils. A person who disrupts the educational process or whose presence is
13 detrimental to the morals, health, safety, academic learning or discipline
14 of the pupils or who loiters in schoolhouses or on school grounds, is guilty
15 of a misdemeanor;

16 (12) To supervise and regulate, including by contract with established
17 entities, those extracurricular activities which are by definition outside
18 of or in addition to the regular academic courses or curriculum of a public
19 school, and which extracurricular activities shall not be considered to be
20 a property, liberty or contract right of any student, and such extracurric-
21 ular activities shall not be deemed a necessary element of a public school
22 education, but shall be considered to be a privilege. For the purposes of
23 extracurricular activities, any secondary school located in this state that
24 is accredited by an organization approved through a process defined by the
25 state department of education shall be able to fully participate in all ex-
26 tracurricular activities described in and governed by the provisions of this
27 subsection;

28 (13) To govern the school district in compliance with state law and
29 rules of the state board of education;

30 (14) To submit to the superintendent of public instruction not later
31 than July 1 of each year documentation which meets the reporting require-
32 ments of the federal gun-free schools act of 1994 as contained within the
33 federal improving America's schools act of 1994;

34 (15) To require that all certificated and noncertificated employees
35 hired on or after July 1, 2008, and other individuals who are required by
36 the provisions of section 33-130, Idaho Code, to undergo a criminal history
37 check shall submit a completed ten (10) finger fingerprint card or scan to
38 the department of education no later than five (5) days following the first
39 day of employment or unsupervised contact with students in a K-12 setting,
40 whichever is sooner. Such employees and other individuals shall pay the cost
41 of the criminal history check. If the criminal history check shows that the
42 employee has been convicted of a felony crime enumerated in section 33-1208,
43 Idaho Code, it shall be grounds for immediate termination, dismissal or
44 other personnel action of the district, except that it shall be the right of
45 the school district to evaluate whether an individual convicted of one ~~(1)~~
46 of these crimes and having been incarcerated for that crime shall be hired.
47 Provided however, that any individual convicted of any felony offense listed
48 in section 33-1208~~(2-)~~, Idaho Code, shall not be hired. For the purposes
49 of criminal history checks, a substitute teacher is any individual who tem-
50 porarily replaces a certificated classroom educator and is paid a substitute

1 teacher wage for one (1) day or more during a school year. A substitute
 2 teacher who has undergone a criminal history check at the request of one (1)
 3 district in which he has been employed as a substitute shall not be required
 4 to undergo an additional criminal history check at the request of any other
 5 district in which he is employed as a substitute if the teacher has obtained
 6 a criminal history check within the previous five (5) years. If the district
 7 next employing the substitute still elects to require another criminal his-
 8 tory check within the five (5) year period, that district shall pay the cost
 9 of the criminal history check or reimburse the substitute teacher for such
 10 cost. To remain on the statewide substitute teacher list maintained by the
 11 state department of education, the substitute teacher shall undergo a crimi-
 12 nal history check every five (5) years;

13 (16) To maintain a safe environment for students by developing a system
 14 that cross-checks all contractors or other persons who have irregular con-
 15 tact with students against the statewide sex offender ~~register~~ registry, by
 16 developing a school safety plan for each school and by meeting annually with
 17 emergency first responders to update the plans and discuss emergency exer-
 18 cises and operations;

19 (17) To provide support for teachers in their first two (2) years in the
 20 profession in the areas of: administrative and supervisory support, mentor-
 21 ing, peer assistance and professional development.

22 SECTION 3. That Section 33-1209, Idaho Code, be, and the same is hereby
 23 amended to read as follows:

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

- 29 (a) An individual with a substantial interest in the matter, except a
- 30 student in an Idaho public school; or
- 31 (b) A local board of trustees.

32 The allegation shall state the specific ground or grounds for the allegation
 33 of unethical conduct that could lead to a possible revocation, suspension,
 34 placing reasonable conditions on the certificate, or issuance of a letter of
 35 reprimand. Upon receipt of a written and signed allegation of unethical con-
 36 duct, the chief certification officer, in conjunction with the attorney gen-
 37 eral and the professional standards commission investigator, shall conduct
 38 a review of the allegation using established guidelines to determine whether
 39 to remand the issue to the school district to be resolved locally or to open
 40 an investigation and forward the case to the professional standards commis-
 41 sion. Within fourteen (14) days of the decision to forward the case, the
 42 chief certification officer shall notify the complainant and the teacher, in
 43 writing, that an investigation will be conducted and the teacher shall be af-
 44 farded an opportunity to respond to the allegation verbally and in writing
 45 prior to the issuance of the complaint. The executive committee of the pro-
 46 fessional standards commission shall review the circumstances of the for-
 47 ward case at one (1) of the two (2) next regularly scheduled meetings, and
 48 determine whether probable cause exists to warrant the filing of a complaint
 49 and the requesting of a hearing.

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

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

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

44 (5) The state superintendent of public instruction, as authorized by
45 the state board of education, has the power to issue subpoenas and compel
46 the attendance of witnesses and compel the production of pertinent papers,
47 books, documents, records, accounts and testimony. The state board or its
48 authorized representative may, if a witness refuses to attend or testify or
49 to produce any papers required by such subpoena, report to the district court
50 in and for the county in which the proceeding is pending, by petition, set-

1 ting forth that a due notice has been given of the time and place of atten-
2 dance of the witnesses, or the production of the papers, that the witness has
3 been properly summoned, and that the witness has failed and refused to at-
4 tend or produce the papers required by this subpoena before the board, or its
5 representative, or has refused to answer questions propounded to him in the
6 course of the proceedings, and ask for an order of the court compelling the
7 witness to attend and testify and produce the papers before the board. The
8 court, upon the petition of the board, shall enter an order directing the
9 witness to appear before the court at a time and place to be fixed by the court
10 in the order, the time to be not more than ten (10) days from the date of the
11 order, and then and there shall show cause why he has not attended and testi-
12 fied or produced the papers before the board or its representative. A copy of
13 the order shall be served upon the witness. If it shall appear to the court
14 that the subpoena was regularly issued by the board and regularly served, the
15 court shall thereupon order that the witness appear before the board at the
16 time and place fixed in the order and testify or produce the required papers.
17 Upon failure to obey the order, the witness shall be dealt with for contempt
18 of court. The subpoenas shall be served and witness fees and mileage paid as
19 allowed in civil cases in the district courts of this state.

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

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

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

44 (9) Whenever any certificate has been revoked, suspended or has had
45 reasonable conditions placed upon it, or an application has been denied, the
46 professional standards commission may, upon a clear showing that the cause
47 constituting grounds for the listed actions no longer exists, issue a valid
48 certificate. Provided however, that no certificate shall be issued to any
49 person who has been convicted of any crime listed in subsection (2-) of sec-
50 tion 33-1208, Idaho Code.

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

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