

IN THE SENATE

SENATE BILL NO. 1297

BY EDUCATION COMMITTEE

AN ACT

1 RELATING TO EDUCATION; AMENDING SECTION 33-517, IDAHO CODE, TO REVISE PROVI-  
2 SIONS RELATING TO POWERS AND DUTIES OF SCHOOL DISTRICTS, TO REVISE PRO-  
3 VISIONS RELATING TO CERTAIN GRIEVANCE PROCEDURES RELATING TO NONCER-  
4 TIFICATED PERSONNEL AND TO MAKE A TECHNICAL CORRECTION.  
5

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

7 SECTION 1. That Section 33-517, Idaho Code, be, and the same is hereby  
8 amended to read as follows:

9 33-517. NONCERTIFICATED PERSONNEL. The board of trustees of each  
10 school district including any specially chartered district, shall have the  
11 following powers and duties:

12 (1) To provide that hiring and evaluation procedures for noncertifi-  
13 cated personnel shall be in writing and shall be available for any noncer-  
14 tificated employee's review at ~~anytime~~ any time. Job descriptions for all  
15 noncertificated employees shall be written and shall be made available to  
16 employees of the district or other people seeking employment.

17 (2) To provide a grievance procedure for noncertificated employees of  
18 the district which meets the minimum standards of paragraphs (a) through (i)  
19 of this subsection. In the event a grievance procedure is not provided, the  
20 following grievance procedure shall apply.

21 (a) A grievance shall be defined as a written allegation of ~~unfair~~  
22 ~~treatment or~~ a violation of written, board approved school district  
23 policy. A noncertificated employee of the district may file a grievance  
24 about any matter related to his employment, provided that neither the  
25 rate of salary or wage, transfer, placement or evaluation of the em-  
26 ployee nor the decision to terminate an employee ~~for cause during the~~  
27 ~~initial one hundred eighty (180) days of~~ from employment shall be a  
28 proper subject for consideration under the grievance procedure pro-  
29 vided in this section.

30 (b) If a noncertificated employee files a grievance, the employee  
31 shall submit the grievance in writing to his or her immediate super-  
32 visor within six (6) working days of the incident giving rise to the  
33 grievance. If the grievant fails to file the written grievance within  
34 six (6) working days of the date of the incident giving rise to the  
35 grievance, the grievance will not move forward through any further step  
36 in this process. The grievance shall state the nature of the grievance,  
37 identify the board policy alleged to be violated by specific policy  
38 number and the specific remedy sought by the employee. Within six (6)  
39 working days of receipt of the grievance, the immediate supervisor  
40 shall provide a written response to the employee.

41 (c) If the noncertificated employee is not satisfied with the response  
42 of the immediate supervisor or if there is no response within the time

1 lines, so long as the initial grievance was filed within six (6) work-  
 2 ing days of the events giving rise to the grievance, the employee may  
 3 appeal the grievance to the superintendent of the district or the su-  
 4 perintendent's designee within five (5) working days of the receipt of  
 5 the response as set out in subsection (2) (b) of this section or within  
 6 five (5) working days from the date the supervisor last had to respond if  
 7 the noncertificated employee received no written response. Within six  
 8 (6) working days of an appeal, the superintendent or his designee shall  
 9 communicate with the noncertificated employee ~~in an effort to resolve~~  
 10 regarding the superintendent's or designee's review of the appeal.  
 11 Within five (5) working days of the communication, the superintendent  
 12 or his designee shall provide a written response to the noncertificated  
 13 employee.

14 (d) If the noncertificated employee is not satisfied with the response  
 15 of the superintendent or his designee, or if there is no response by  
 16 the superintendent or his designee within the time frame provided in  
 17 subsection (2) (c) of this section, the noncertificated employee may  
 18 request a review of the grievance by a hearing panel within five (5)  
 19 working days from receipt of the response provided in subsection (2) (c)  
 20 of this section if the employee received a written response, or five  
 21 (5) working days from the date the superintendent last had to respond  
 22 if the noncertificated employee received no written response. Within  
 23 ten (10) working days of receipt of an appeal, the board of trustees  
 24 shall convene a panel consisting of three (3) persons; one (1) desig-  
 25 nated by the board of trustees, one (1) designated by the employee, and  
 26 one (1) agreed upon by the two (2) appointed members for the purpose of  
 27 reviewing the appeal. No individual member of the panel shall have been  
 28 a participant in the underlying events giving rise to the grievance or  
 29 as a participant in the grievance process. Within five (5) working days  
 30 following completion of the review, the panel shall submit ~~its decision~~  
 31 an advisory opinion in writing to the noncertificated employee, the  
 32 superintendent, and the board of trustees.

33 (e) The panel's ~~decision~~ submission shall be an advisory opinion for  
 34 the board's consideration with the final and conclusive resolution of  
 35 the grievance unless to be made by the board of trustees. ~~overturns the~~  
 36 ~~panel's decision by resolution at the board of trustees' next regularly~~  
 37 ~~scheduled public meeting or unless within forty-two (42) calendar days~~  
 38 ~~of the filing of the board's decision, either party appeals to the dis-~~  
 39 ~~trict court in the county where the school district is located. Upon~~  
 40 ~~appeal of a decision of the board of trustees, the district court may~~  
 41 ~~affirm or set aside and remand the matter to the board of trustees upon~~  
 42 ~~the following grounds, and shall not set the same aside on any other~~  
 43 ~~grounds:~~

- 44 ~~(i) That the findings of fact are not based on any substantial,~~  
 45 ~~competent evidence;~~
- 46 ~~(ii) That the board of trustees has acted without jurisdiction or~~  
 47 ~~in excess of its powers;~~
- 48 ~~(iii) That the findings by the board of trustees as a matter of law~~  
 49 ~~do not support the decision.~~

1 (f) A noncertificated employee filing a grievance pursuant to this  
2 section shall be entitled to a representative of the employee's choice  
3 at each step of the grievance procedure provided in this section. The  
4 supervisor, superintendent, or the superintendent's designee shall  
5 be entitled to a representative at each step of the grievance proce-  
6 dure. None of these individuals will be qualified to sit on the advisory  
7 panel.

8 (g) Other than the mandatory six (6) day initial grievance filing dead-  
9 line, the time lines of the grievance procedure established in this  
10 section may be waived or modified by mutual agreement.

11 (h) Utilization of the grievance procedure established pursuant to  
12 this section shall not constitute a waiver of any right of appeal avail-  
13 able pursuant to law or regulation. However, the grievance process  
14 provided by the board, or if none is provided, the grievance process  
15 outlined in this section, shall be a prerequisite to filing any state  
16 law claim based on the subject matter of the grievance. Failure to file  
17 a grievance on such a state law claim shall be deemed a waiver of any  
18 claim which arises out of the subject matter of the potential grievance.

19 (i) Neither the board nor any member of the administration shall take  
20 reprisals affecting the employment status of any party in interest. The  
21 employee filing the grievance shall not take any reprisals regarding  
22 the course or outcome of the grievance nor against any party of interest  
23 participating in the grievance.

24 (j) A noncertificated employee of a school district shall be required  
25 to review and sign any entries made to his personnel file. In the event the  
26 employee refuses to sign a document, the document shall be placed into the  
27 employee's file noting that the employee refused to sign. At reasonable  
28 times and places, in the presence of an appropriate district official, a  
29 noncertificated employee may inspect documents contained in his official  
30 personnel file.