

## 2021 ISBA RESOLUTION NO. 8

### ADMINISTRATIVE LEAVE WITH PAY

**WHEREAS**, subsection (4) of Idaho Code 33-512 provides that a board has the power and duty “[t]o protect the morals and health of pupils; and

**WHEREAS**, subsection (11) of Idaho Code 33-512 provides that a board has the power and duty “[t]o prohibit entrance to each schoolhouse or school grounds, to prohibit loitering in schoolhouses or on school grounds and to provide for the removal from each schoolhouse or school grounds of any individual or individuals who disrupt the educational process or whose presence is detrimental to the morals, health, safety, academic learning or discipline of the pupils. . . .”;

**WHEREAS**, subsection (7) of Idaho Code 33-513 provides for the authority of the board to delegate to the superintendent or other designee the ongoing authority to place any employee on a period of involuntary leave of absence should the superintendent or designee believe that such action is in the best interest of the district, with a requirement of the board to nullify or ratify such action during the next regularly scheduled meeting or a specially set meeting within a period of twenty-one (21) days of such act by the superintendent or designee; and

**WHEREAS**, pursuant to the aforementioned code section, such leave of absence shall be with pay unless certain very limited circumstances exist relating to court orders preventing the employee from being in the presence of minors or students or another adult present on school property or if the employee is in jail and unable to perform the essential functions of their position; and

**WHEREAS**, the period of paid involuntary leave of absence may extend beyond a sixty (60) day time period if criminal charges or a criminal investigation is pending; and

**WHEREAS**, management of the period of paid involuntary leave of absence for an employee is entirely out of the control of Idaho Public Schools as they do not control the criminal investigation and/or criminal courts process and have no control over an employee’s waiver of speedy trial rights; and

**WHEREAS**, individuals, including public school employees, pursuant to the 6<sup>th</sup> Amendment to the U.S. Constitution, applicable to the states, including the State of Idaho through the 14<sup>th</sup> Amendment to the U.S. Constitution, and via Article I, Section 13 of the Idaho Constitution, have a right to a speedy trial in the context of a criminal charge pending, such right which can only be waived by the criminal case defendant; and

**WHEREAS**, numerous Idaho public school districts and charter schools have had certificated professional employees on periods of paid administrative leave, pending the

outcome of criminal investigations and/or criminal trials, where such individuals have waived their respective rights to a speedy criminal trial, resulting in individuals on paid administrative leave for well over one (1) year and in some instances nearing a two (2) year period, causing an economic hardship to Idaho public schools;

**NOW, THEREFORE BE IT RESOLVED** that the Idaho School Boards Association educate the Idaho Legislature regarding this burdensome mandate on Idaho public schools and research, draft, and submit legislation that proposes an amendment to Idaho Code 33-513(7) and any other related statutes to limit the financial exposure to school districts associated with administrative leave with pay when an employee is on administrative leave due to pending criminal charges. This may be addressed by either considering such to be covered under subsection (7)(a) not obligating compensation or, at minimum, defining a period of time for the employee to be entitled to compensation.

### **STATEMENT OF PURPOSE**

Idaho public schools have found themselves in situations where multiple employees throughout the state have criminal charges pending against them which negatively impact and/or prevent the individual's ability to work as an educator for the school. However, such individuals do not necessarily fall under the no-pay provision of Idaho Code 33-513(7). This results in school districts and charter schools having to pay employees who are not working and cannot be in the school setting for significant periods. It does not appear that 33-513(7) envisioned situations where such employees would waive their rights to speedy trial. Such employees literally cannot work in the school setting and collect compensation from already financially strapped school districts for significant periods of time, including periods up to two (2) calendar years.

**Submitted by Pocatello Chubbuck School District No. 25**  
**Submitted by Idaho Virtual Academy**

**Recommendation of the ISBA Executive Board: Do Pass**  
*Jody Hendrickx will address the ISBA Executive Board's Recommendation*