

## **Subject: Pending Administrative Rule Changes – 2001 – Public Hearing and Final Approval**

### **Background / Discussion**

Attached is a list of all pending Board rules anticipated for legislative action in the 2001 session (with the exception of one that will be included in the State Department of Education's Agenda). This is the second time that the Board has seen these rules. Any changes since the proposed rule approval are indicated in the summary preceding the full text of the rule. Additions to rules are underlined and deletions are stricken (with the exception of rules related to Personnel, Financial Affairs and Intellectual Property, which are to be repealed entirely.)

### **Board Action and Hearing Procedures**

The necessary hearing procedure related to each rule is indicated at the beginning of each item. It is also necessary for the Board to approve the rules, either individually or collectively, in order for them to be forwarded to the 2001 Legislature for consideration.

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**OFFER TIME FOR PUBLIC TESTIMONY: Yes**

<b>Rule Number</b>	<b>Agency/ Contact</b>	<b>PROPRIETARY SCHOOLS</b>	<b>Proposed Rule Approval</b>
08-01-11 106.01	OSBE Dodson	The rule change deletes “certificate” from the definition of a program, at the request of the House Education Committee. Program will now be defined as a series of courses that lead to only a degree, not those leading to a certificate, to avoid confusion with certificates of completion commonly awarded by business and industry for employee training.	Nov 1999

**PENDING RULE TEXT – PROPRIETARY SCHOOLS**

08.01.11 - OUT-OF-STATE INSTITUTIONS, IN-STATE NON-ACCREDITED INSTITUTIONS, AND CORRESPONDENCE OR PRIVATE COURSES

**106. REGISTER OF ACCREDITED OUT-OF-STATE INSTITUTIONS**

01. Definitions. A course is defined as set forth in Section 33-2401(5) Idaho Code. A program is defined as a series of courses leading to the awarding of a ~~certificate or~~ degree.

(7-1-01)

**OFFER TIME FOR PUBLIC TESTIMONY: Yes**

<b>Rule Number</b>	<b>Agency/ Contact</b>	<b>RESIDENCY CLASSIFICATION</b>	<b>Proposed Rule Approval</b>
08-01-04 005.07	OSBE Dodson	Changes definition of armed forces in rules governing residency classification to include the U.S. Coast Guard. Intended to allow a person separated under honorable conditions from the U.S. Coast Guard who designates Idaho as his/her intended domicile to be considered an Idaho resident for tuition purposes.	August 2000

**PENDING RULE TEXT – RESIDENCY CLASSIFICATION**

08.01.04 - RULES GOVERNING RESIDENCY CLASSIFICATION  
THE STATE BOARD OF EDUCATION

**005. DEFINITIONS.**

**01. Resident Student.** Resident student is defined in Section 33-3717, Idaho Code, and specifically includes:

(1-1-94)

a. Any student who has one (1) or more parent or court appointed guardians who are domiciled in the state of Idaho for at least one (1) year prior to the opening day of the term for which the student matriculates. (1-1-94)

b. Any student who receives less than fifty percent (50%) of his support from a parent, parents, or legal guardians who are not residents of Idaho for voting purposes and which student has continuously resided in the state for twelve (12) months immediately preceding the opening day of the term during which the student proposes to attend and who has in fact established a bona fide domicile in the state of Idaho primarily for purposes other than educational. (1-1-94)

c. Unless disqualified as a nonresident student as defined in Subsection 005.02, any student who is a graduate of an accredited secondary school in the state of Idaho and who matriculates during the term immediately following such graduation. (1-1-94)

d. The spouse of a person who is classified or is eligible for classification as a resident of the state for purposes of attending a college or university, provided that the institution shall require the filing of proof of marriage by the applicant. (1-1-94)

e. A member of the armed forces of the United States stationed in the state on military orders. (1-1-94)

f. A student whose parent or guardian is a member of the armed forces and stationed in the state on military orders and who receives fifty percent (50%) or more of his support from a parent or guardian, provided that the student, while in continuous attendance, shall not lose residency status when the student's parent or guardian is transferred on military orders. (1-1-94)

g. A person separated, under honorable conditions, from the United States armed forces after at least two (2) years of service, who at the time of separation designates the state of Idaho as his intended domicile or who has Idaho as the home of record in service and enters a college or university in the state within one (1) year of the date of separation. (1-1-94)

h. Any person who has been domiciled in the state, has qualified and would otherwise be qualified under Section 33-3717, Idaho Code, and who is away from the state for a period of less than one (1) calendar year and has not established legal residence elsewhere, provided a twelve (12) month period of continuous residence has been established immediately prior to departure. (1-1-94)

*(BREAK IN SECTION CONTINUITY)*

**07. Armed Forces.** "Armed forces" means the United States Army, Navy, Air Force, ~~and~~ Marine Corps and United States Coast Guard. It does not include the ~~United States Coast Guard~~, National Guard, or other reserve force. (1-1-94)(      )

**OFFER TIME FOR PUBLIC TESTIMONY: Yes**

<b>Rule Number</b>	<b>Agency/Contact</b>	<b>PERSONNEL</b>	<b>Proposed Rule Approval</b>
08-01-02 all sections	OSBE Satterlee	Repeal the SBOE personnel rules effective July 2001. It is unnecessary to have these in administrative rule. Personnel regulations are provided for in Board Policy.	August 2000

**PROPOSED RULE TEXT – PERSONNEL  
TO REPEAL THE RULE ENTIRELY**

**08.01.02 - PERSONNEL RULES OF THE STATE BOARD OF EDUCATION**

**000. -- 099. (RESERVED).**

**100. APPOINTING AUTHORITY.**

Except where it has expressly delegated its authority, the State Board of Education and Board of Regents of the University of Idaho (hereinafter collectively the “Board”) is the appointing authority for each agency, institution, school, office, and department under its governance, except for the State Library and the Idaho State Historical Society whose employees are subject to the State Library Board and the Board of Trustees of the Idaho State Historical Society. (7-1-93)

**101. CATEGORIES OF EMPLOYEES.**

**01. Classified Employees.** Any person whose appointment, employment status, personnel actions, and primary employment benefits are subject to the Idaho personnel system established pursuant to chapter 53, title 67, Idaho Code, and who is regulated by the rules of the Idaho Personnel Commission and enabling legislation. To secure substantial equity among employees similarly situated, it is declared to be the express policy of the Board that employees of the University of Idaho who would be subject to the Idaho classified personnel system if they performed the same duties at another institution of higher education (hereinafter referred to as “University of Idaho classified employees”) are entitled to the same compensation, vacation and sick leave, promotion, demotion, termination, merit increase, layoff rights, and employee grievance procedures that are provided to their counterparts at the other institutions of higher education by the laws of Idaho and the rules of the Idaho Personnel Commission; however, in the event a regulation of the Board directed to the University of Idaho classified employees is at variance with the rules of the Idaho Personnel Commission in these areas, the rules of this Board govern. (7-1-93)

**02. Exempt Employees.** Any person appointed to or holding a position at an institution, agency, school, department, or office whose position is not subject to the provisions of chapter 53, title 67, Idaho Code. (7-1-93)

a. Pleasure of the Board. Notwithstanding the provisions of Subsections 102.02 and 103.02.c. of this chapter, the Board’s executive director and the chief executive officers of each agency, institution, or school under the governance of the Board serve at the pleasure of the Board. They may be dismissed from their administrative positions at any time with or without cause or written notice. The Superintendent of Public Instruction, the chief executive officer of the State Department of Education, being an elected constitutional officer, may not be dismissed by the Board. (7-1-93)

b. Administrative Employees. The Board’s executive director, the chief executive officers, and other personnel in such positions at the institutions, agencies, school, department, or office as may be designated by the chief executive officer as administrative positions. (7-1-93)

c. Institutional Faculty. All employees who hold the rank of instructor or a higher rank at the University of Idaho, Idaho State University, Boise State University, Lewis-Clark State College, and Eastern Idaho Technical College. (7-1-93)

d. School Faculty. Employees holding instructional or instructional support appointments at the State School for the Deaf and the Blind. (7-1-93)

e. Temporary or Special Exempt Employees. Persons appointed to positions that are either temporary or special, and generally meet specific position requirements for: (7-1-93)

i. A grant or contract of a specified duration; or (7-1-93)

- ii. Part-time teaching or other responsibilities; or (7-1-93).
- iii. Fulfilling the responsibilities of a permanent position on a temporary or emergency basis. (7-1-93)

## **102. LETTER OF APPOINTMENT -- PERSONNEL ACTION FORM.**

**01. Classified Employees.** All salaried employees of the Board who are subject to the Idaho classified personnel system or who are University of Idaho classified employees receive upon appointment personnel action forms in lieu of letters of appointment. The rights of these employees to continuous employment, if any, are governed by the rules of the Idaho Personnel Commission, enabling legislation, and these rules where applicable. (7-1-93)

**02. Exempt Employees.** All salaried employees of the Board who are not subject to the Idaho classified personnel system and are not University of Idaho classified employees serve pursuant to letters of appointment. The letter of appointment must include the period of the appointment, salary, pay periods, position title, employment status, and reappointment rights, if any, and such other materials as the agency, institution, school, department, or office may elect to include in order to define the primary elements of the contract of employment. Each employee must acknowledge receipt and acceptance of the terms of the letter of appointment by signing and returning a copy to the agency, institution, school, office, or department initiating the offer of appointment. Failure or refusal of the employee to sign and return a copy of the letter of appointment within the time specified in the letter is deemed rejection of the offer of employment unless the parties have mutually agreed to extend the time. Nothing in this paragraph prohibits the agency, institution, school, office, or department from extending another offer to the employee in the event the initial offer was not signed and returned in a timely manner. Any alteration by the employee of the offer is deemed a counter-offer requiring an affirmative act of acceptance by an officer authorized to enter into contracts of employment binding the agency, institution, school, office, or department. (7-1-93)

## **103. TERM OF APPOINTMENT -- NONRENEWAL -- GRIEVANCE.**

**01. Classified Employees.** Term of appointment and grievance procedures for classified employees or University of Idaho classified employees are provided for in Subsection 101.01 of this chapter. A University of Idaho classified employee may appeal to the Board from a final decision of the University of Idaho under its internal grievance procedure to the same extent that the employee's counterparts at the other institutions of higher education may appeal to the Idaho Personnel Commission. The appeal procedure before the Board must be as now or hereafter provided by Section 67-5316, Idaho Code, and Rule 20 of the Idaho Personnel Commission, or their successor parts, except insofar as they are inconsistent with either the substantive rules or rules of procedure of the Board. (7-1-93)

### **02. Exempt Employees.** (7-1-93)

a. Employees occupying faculty positions. The appointment, advancement, and retention of employees occupying faculty positions at the University of Idaho, Idaho State University, Boise State University, Lewis-Clark State College, and Eastern Idaho Technical College are governed by Sections 200 through 205 of this chapter, except as provided for in Subsection 103.02.c. (7-1-93)

b. Temporary or special employees. As provided for in Subsection 101.02.e. of this chapter, the Board recognizes a class of temporary or special employees who have no expectation of continuing employment beyond an existing contract period and whose service in no way qualifies them for consideration for tenure status in the appointment. Each institution may negotiate the terms of contracts of employment of temporary or special employees depending upon the particular needs of the institution, but the Board remains the appointing authority. Under no circumstances, however, are temporary or special employees legally entitled to any advance notice, cause, or reasons for the institution not electing to enter into another contract of employment for another period, nor is such action or inaction by the institution grievable or appealable in any way whatsoever. (7-1-93)

c. Nontenured, non-classified employees. All salaried employees of the Board who are not tenured faculty members at the University of Idaho, Idaho State University, Lewis-Clark State College, Boise State University, or Eastern Idaho Technical College, are not subject to the Idaho classified personnel system, and are not University of Idaho classified employees, have fixed terms of employment. No contract of employment with such an employee may exceed one (1) year without the prior approval of the Board. Employment beyond the contract period may not be legally presumed. Renewal of an employment contract is subject to the discretion of the chief executive officer of the agency, institution, school, office, or department, and of the Board. (7-1-93).

i. Notice of nonrenewal. Notice of the intention of the chief executive officer to recommend to the Board nonrenewal of a contract of employment must be given in writing to the employee at least sixty (60) calendar days before the end of the existing period of appointment; provided, however, that notice of non-reappointment must be provided to nontenured institutional faculty members in accordance with Section 202 of this chapter. Reasons for recommending nonrenewal need not be stated. However, the Board recognizes that while nonrenewal without cause is its legal right, still nonrenewal may impose a severe economic and personal loss on an employee. While it is unlikely that an employee would not have actual notice of the

reasons for nonrenewal, the Board authorizes each institution, agency, school, office, or department electing to do so, to give to the employee a written statement of the reasons for nonrenewal. It is not the intention of the Board, however, to convert thereby nonrenewal of a fixed-term contract to dismissal for cause, or to establish or shift to the institution, agency, school, office, or department any burden of proof, but rather to soften the effects of nonrenewal upon an individual employee. Failure to give timely notice of nonrenewal because of mechanical, clerical, mailing, or similar error is not deemed to renew the contract of employment for another full term, but the existing term of employment must be extended to the number of days necessary to allow sixty (60) calendar days notice to the employee. (7-1-93)

ii. Grievance of nonrenewal. As a general rule, nonrenewal and recommendation of nonrenewal are not grievable within the agency, institution, school, office, or department, nor are they appealable to the Board. If a recommendation of nonrenewal is rejected by the Board and the contract of employment renewed for another term, the employee may thereafter use the internal grievance procedure to seek to have the unfavorable recommendation expunged from the personnel records of the agency, institution, school, office or department. Under no circumstances, however, will the Board's record of recommendation of nonrenewal and rejection of that recommendation be expunged. If an employee alleges in writing to the chief executive officer of the agency, institution, school, department, or office that the recommendation of nonrenewal of the contract of employment has been made for legally impermissible reasons, the employee is entitled to use the internal grievance procedure to test the allegation; provided, however, that the allegation must be filed in the office of the chief executive officer within fifteen (15) calendar days after the employee receives notice of the intention to recommend nonrenewal; and provided further, that the allegation must be made with particularity and support by such documentary evidence and statements of witnesses as may be reasonably available to the employee under the circumstances. The normal internal grievance procedure must be used unless changed by mutual consent of the parties. The ultimate burden of proof rests with the employee. The agency, institution, school, office, or department is required to offer evidence of its reasons for nonrenewal only if the employee has made a prima facie showing that the recommendation of nonrenewal was made for legally impermissible reasons. Unless mutually agreed to by the parties in writing, the use of the grievance procedure will not delay the Board's consideration of the recommendation of nonrenewal, nor will it delay the effective date of nonrenewal. The decision of the agency, institution, school, office, or department is final. (7-1-93)

iii. Petition -- Board Review. The employee may elect to petition the Board to review the final action of the agency, institution, school, office, or department. Any petition for review must be filed at the Office of the State Board of Education within fifteen (15) calendar days after the employee receives notice of final action under the grievance procedure. The Board may agree to review the final action, setting out whatever procedure and conditions for review it deems appropriate, or it may choose not to review the final action. The fact that a review petition has been filed will not stay the effectiveness of the final action, nor will the grant of a petition for review, unless specifically provided by the Board. Board review is not a matter of right. An employee need not petition for Board review in order to have exhausted administrative remedies for purposes of judicial review. (7-1-93)

#### **104. DISMISSAL FOR CAUSE.**

All employees of the Board or of the agencies, institutions, school, or office under its jurisdiction are subject to dismissal for adequate cause during the period of employment. "Adequate cause" means one (1) or more acts or omissions which, singly or in the aggregate, have directly and substantially affected or impaired an employee's performance of his professional or assigned duties or the best interests of the institution, agency, school, or office. (7-1-93)

**01. Classified Employees.** Dismissal of classified employees is as provided for in Chapter 53, Title 67, Idaho Code, and rules of the Idaho Personnel Commission. A University of Idaho classified employee may appeal to the Board from a final decision of the University of Idaho to the same extent that the employee's counterparts at other institutions may appeal to the Idaho Personnel Commission; provided, however, that in the event rules of the Idaho Personnel Commission are inconsistent with either the substantive rule or rules of procedure of the Board, the rules of the Board govern. (7-1-93).

**02. Exempt Employees.** Dismissal of exempt employees is as provided for in Section 204 of this chapter. Section 204 does not apply to exempt employees of the State Department of Education pursuant to Section 33-127, Idaho Code, which authorizes the state superintendent of public instruction to hire and dismiss employees of the State Department of Education. (7-1-93)

**03. Internal Procedures.** Section 204 of this chapter provides for dismissal or termination of exempt employees and establishes a procedure whereby the employee may appeal to the Board the chief executive officer's recommendation of dismissal or termination. In addition, each institution, agency, school, and office must establish a written procedure for dismissal or termination of employees for cause which shall include the following: (7-1-93)

a. An internal opportunity to contest the reasons for dismissal or termination with the individual responsible for making the recommendation of dismissal or termination to the chief executive officer. This opportunity need not be in the nature of a grievance hearing but shall afford the employee notice of the reasons for termination or dismissal; the evidence supporting the decision; and an opportunity to present reasons, evidence; or (7-1-93)

b. An internal appellate procedure which may be used by the employee following the receipt of the written notice of the chief executive officer's recommendation for dismissal of the employee as provided in Subsection 204.06.b. of this chapter. Should the employee not elect to use the internal appellate procedure, he may appeal to the Board as provided in Subsection 204.06.b.i. of this chapter. In no event may the employee use both procedures. Each institution shall establish a reasonable time frame to complete the internal appeals process, said time not to exceed thirty (30) calendar days from the date the notice of dismissal or termination is given to the employee. (7-1-93)

### **105. NONDISCRIMINATION.**

No one may be denied employment, denied renewal of a contract of employment, or dismissed from employment at any agency, institution, school, or office under the governance of the Board because of race, color, national origin, religion, sex, age, disability, or veteran's status, except that an employee may be terminated for age pursuant to the retirement policy of the Board in Governing Policies and Procedures, Section II, Subsection K. (7-1-93)

### **106. OPTIONAL RETIREMENT PROGRAM.**

Pursuant to Section 33-107A, Idaho Code, the State Board of Education is authorized to establish a retirement program under which contracts providing retirement and death benefits may be purchased for members of the faculty and nonclassified staff of the University of Idaho, Idaho State University, Boise State University, Lewis-Clark State College, and the Office of the State Board of Education. The State Board of Education provides for the administration of the Optional Retirement Program in accordance with the Idaho State Board of Education Optional Retirement Plan (hereinafter "the Plan"), a copy of which is on file at the Office of the State Board of Education and at the institutions mentioned above. The Plan may be amended from time to time in accordance with its terms and applicable regulations of the Internal Revenue Service. (7-1-93)

**01. Designation Of Contract Providers.** The Board has initially designated companies from which contracts are to be purchased under the optional retirement program. (7-1-93)

**02. Eligible Employees.** Pursuant to Section 33-107A, Idaho Code, eligible employees are those active faculty and nonclassified employees initially hired or appointed on or after July 1, 1990, but shall exclude employees who are active members of the public employees retirement system of Idaho immediately prior to appointment to the faculty or nonclassified staff for an appointment which occurs after July 1, 1990. Eligible employees shall participate in the Optional Retirement Program at the time of entry into service. Classified employees are ineligible for participation. Active faculty and nonclassified staff hired before July 1, 1990, may make a one-time irrevocable election to participate in the optional retirement program. The election must be made by September 28, 1990, and is treated as a separation from service for benefits under chapter 13, title 59, Idaho Code. A person electing to participate in the optional retirement program is ineligible to participate in the public employees retirement system for as long as he remains continuously employed in any faculty or nonclassified position at any of the institutions under the governance of the State Board of Education. "Eligible employees" shall exclude classified employees, employees whose employment is expected to be less than five (5) months, and employees whose employment is incidental to their status as students at the institution. (7-1-93).

a. Classified employees. For purposes of this section, "classified employee" means any person whose appointment, employment status, personnel actions, and primary employment benefits are subject to the Idaho Personnel System established pursuant to Chapter 53, Title 67, Idaho Code, or who is a University of Idaho classified employee. (7-1-93)

b. Active faculty and nonclassified staff. For purposes of this section, "active faculty and nonclassified staff" means any exempt employee as set forth in Subsection 101.02 of these rules and includes administrative employees, institutional faculty, temporary or special exempt employees, and any employee serving at the pleasure of the Board as defined therein. (7-1-93)

### **107. -- 199. (RESERVED).**

## **200. TENURE.**

Tenure is a condition of presumed continuous employment following the expiration of a probationary period. After tenure has been awarded, the faculty member's service may be terminated only for adequate cause, the burden of proof resting with the institution, except in the case of retirement for age, under conditions of financial exigency as declared by the State Board of Education and Board of Regents of the University of Idaho ("Board"), in situations where extreme shifts of enrollment have eliminated the justification for a position, or where the Board has authorized elimination or substantial reduction in an academic or vocational program. Tenure status is available only to full-time institutional faculty members, as defined by appropriate institutional authority, whose appointments have been approved by the Board. All faculty appointments are subject to the approval of the Board. No nontenured member of the faculty should expect continued employment beyond the period of his current appointment as approved by the Board. Any commitment to employ a nontenured member of the faculty beyond the period of his current appointment is wholly ineffective without prior approval of the Board. (7-1-93)

**01. Acquisition Of Tenure.** Institutional faculty members, after meeting certain requirements set forth in Section 201, may acquire tenure. Acquisition of tenure is not automatic but requires an explicit judgment, decision, and approval. However, when a faculty member becomes eligible for tenure, and in no case later than during the faculty member's seventh full academic year of employment at the institution, the faculty member must be evaluated for the acquisition of tenure. (7-1-93)

**02. Notification.** An individual eligible for tenure must be informed, by proffered written contract, of appointment or nonappointment to tenure not later than June 30 of the academic year during which the decision is made. (7-1-93)

**03. Nonappointment To Tenure.** In case of nonappointment to tenure in accordance with the standards of eligibility set forth in Section 201, the faculty member must be given a letter of notice of nonreappointment in accordance with the provisions of Section 202. (7-1-93)

## **201. STANDARDS OF ELIGIBILITY FOR TENURE STATUS.**

**01. Annual Appointments.** All first-year appointments are made for a period not to exceed one (1) year. Ordinarily, appointments are made for periods of one (1) year each before a tenure decision becomes mandatory. Such decisions are usually made no earlier than during the fifth full academic year of employment and not later than the seventh such year. (7-1-93)

**02. Service In Professorial Rank.** All satisfactory service in any professorial rank may be used to fulfill the time requirement for acquiring tenure. Each institution must develop criteria and rules by which prior service may be evaluated for inclusion in experience necessary for acquiring tenure. (7-1-93)

**03. Service In Instructor Rank.** A maximum of two (2) years satisfactory service in the rank of instructor at the institution will be allowed in partial fulfillment of the time requirement in the professorial ranks. Faculty members who hold the rank of senior instructor are eligible for tenure status, as herein provided, even though they teach in fields which have established professorial ranks. Instructors in vocational-technical schools and departments are eligible for tenure as herein provided. (7-1-93)

**04. Exceptional Cases.** Tenure may be awarded prior to completion of the usual probationary period in certain exceptional cases. Prior to attaining tenure status, the burden of proving worth rests with the individual. (7-1-93)

## **202. NOTICE OF NONREAPPOINTMENT OR TERMINATION OF APPOINTMENT OF NONTENURED FACULTY MEMBERS.**

Notice of nonreappointment or termination must be given in writing in letter form and in accordance with the following standards: (7-1-93)

**01. Nonrenewal -- First Year Of Service.** Not later than March 1 of the first full academic year of service if the appointment is not to be renewed at the end of the academic year; or if a one-year appointment terminates during an academic year and is not to be renewed, at least three (3) months in advance of its termination. (7-1-93)

**02. Nonrenewal -- Second Year Of Service.** Not later than December 15 of the second full academic year of service if the appointment is not to be renewed at the end of that year; or, if the appointment terminates during an academic year and is not to be renewed, at least six (6) months in advance of its termination. (7-1-93)

**03. Nonrenewal -- Three (3) Or More Years Of Service.** At least twelve (12) months before the expiration of an appointment after two (2) or more full academic years in the institution. (7-1-93)

**04. Financial Exigency.** Notice of nonreappointment, as provided in Subsections 202.01, 202.02, and 202.03 above, is not required when the Board has authorized a reduction in force resulting from a declaration of financial exigency and a nontenured faculty member is to be laid off. In that event, notice of layoff must be given as provided under the rules for reduction in force (Section 258). (7-1-93)



**05. Request For Review.** Nonreappointment of term employees at the end of their term of appointment is not subject to investigation or review except that the employee may request an investigation or review to establish that written notice was or was not received in accordance with the time requirements set forth in this section. In such cases, the investigation or review will be concerned only with manner and date of notification of nonreappointment and will not consider grounds for nonreappointment (see Subsection 204.07). The employee must request such investigation or review in writing of the chief executive officer within fifteen (15) days of receipt of the written notice of nonreappointment. (7-1-93)

## **203. EVALUATION OF FACULTY MEMBERS.**

**01. Annual Evaluation.** Each year the chairman of a department must submit to the dean of the chairman's college an evaluation of each faculty member in the department. This evaluation, together with the opinion of higher administrators, will be used as one (1) basis for the final recommendation relative to reappointment, nonreappointment, acquisition of tenure, or other personnel action, whichever is appropriate. The chairman must communicate an assessment of strengths and weaknesses to each faculty member evaluated. (7-1-93)

**02. Evaluation Criteria.** Evaluation of faculty should be made in terms of the individual's potential effectiveness as a permanent member of the local academic community. (7-1-93)

**03. Evaluation For Tenure.** It is expected that the chief executive officer making the recommendation for tenure will have sought and considered evaluations of each candidate by a committee appointed for the purpose of annual evaluations or tenure status. Such committee must consist of tenured and nontenured members of the department, if available; equitable student representation; and one (1) or more representatives from outside the department. Committee appointment procedure and representation are subject to prior approval by the Board. Each member of the committee has an equal vote on all matters. The committee must give proper credence and weight to collective student evaluations of faculty members, as evidenced by an auditing procedure approved by the chief executive officer. The recommendation of the committee will be forwarded in writing through appropriate channels, along with written recommendations of the department chairperson or unit head, dean, and appropriate vice president, to the chief executive officer, who is responsible for making the final decision on submitting the recommendation to the Board. The Board retains full authority to accept or reject recommendations made pursuant to Section 203. The Board constitutes the final authority concerning reappointment, non-reappointment, or the acquisition of tenure of all faculty members. Procedures for evaluation for tenure at Eastern Idaho Technical College must be consistent with the intent of this subsection. (7-1-93)

**04. Periodic Performance Review.** It is the policy of the Board that at intervals not to exceed five (5) years following the award of tenure to faculty members, the performance of tenured faculty must be reviewed by members of the department or unit and the department chairperson or unit head. The review must be conducted in terms of the tenured faculty member's continuing performance in the following general categories: teaching effectiveness, research or creative activities, professional related services, other assigned responsibilities, and overall contributions to the department. (7-1-93)

a. Procedures for periodic review. Each institution must establish procedures for the performance review of tenured faculty members at the institution. Such procedures are subject to the review and action of the Board. Each year the academic vice president or designee is responsible for designating in writing those tenured faculty members whose performance is subject to review during the year. (7-1-93)

b. Review standards. If during the periodic review, the performance of a tenured faculty member is questioned in writing by a majority of members of the department or unit, the department chairperson or unit head, the appropriate dean, the appropriate vice president, or the chief executive officer, the appropriate vice president or equivalent administrator must decide whether a full and complete review must be conducted in accordance with the procedures established for the initial evaluation for tenure at the institution. If during the periodic review, the performance of a tenured faculty member is not questioned in writing as described in the preceding paragraph, members of the department or unit and the department chairperson or unit head must prepare a written review statement that the performance review has been conducted and that a full and complete review is not required. (7-1-93)

c. Termination of employment. If, following a full and complete review as required by Subsection 203.04.b., a faculty member's performance is judged to have been unsatisfactory or less than adequate during the period under review, the chief executive officer may initiate termination of employment procedures for the faculty member (see Section 204). (7-1-93)

## **204. DISMISSAL OR TERMINATION OF EXEMPT EMPLOYEES.**

**01. Employee Dismissal.** Under various provisions of title 33, Idaho Code, and applicable provisions

of the constitution of the state, the Board may dismiss, for cause, any employee of any institution, agency, school, or office under its constitutional or statutory authority except as provided in Subsection 104.02 of these rules. (7-1-93)

**02. Grounds For Termination.** Termination of an employee before the expiration of the stated period of his appointment or of a faculty member who has been granted tenure, except by resignation, or by retirement for age in accordance with these rules, will be only for good cause shown. Any employee may be laid off in conjunction with a reduction in force approved by the Board and resulting from a declaration of financial exigency. Layoff and reinstatement of employees to duty will be as provided in the Board's rules regarding reduction in force and employment preference (Part III). (7-1-93)

**03. Cause.** Any conduct seriously prejudicial to an institution, agency, school, department, or office may constitute cause for dismissal or termination of any employee. Examples include, but are not limited to, immorality, criminality, dishonesty, unprofessional conduct, actions in violation of policies, directives, or orders of the Board, unsatisfactory or less than adequate performance of his assigned or contractual duties, or failure to perform his assigned or contractual duties. "Adequate cause" also is defined in Section 104 of this chapter. (7-1-93)

**04. Violation Of Law.** Violation of Sections 33-3715 and 33-3716, Idaho Code, or violation of any law which results in a felony conviction of an employee may be cause for suspension with pay or dismissal from the institution, agency, school, or office. Dismissal must be preceded by the procedures in Section 204. It is not necessary that such violations be committed on the campus of one (1) of the institutions of the state of Idaho unless the same is a material element of such violation. (7-1-93)

**05. Failure To Fulfill Assigned Duties.** If, without the approval of the chief executive officer, an employee for reasons other than illness or institutional business, fails to meet his teaching commitments or other assigned duties, the chief executive officer may suspend the employee from his assigned duties, with pay, or recommend the employee's dismissal. (7-1-93)

**06. Procedures.** In each case the issue of whether or not good cause for termination or dismissal exists should be determined fairly by the institution, recognizing and affording protection to the rights of the employee and to the interests of the Board and its institutions, agencies, school, or office. (3-19-93)

a. Dismissal of employees before the expiration of the stated period of appointment or employment or of tenured faculty will be only for good cause shown, as determined by the appropriate administrative officers to whom this responsibility is delegated by the chief executive officer of the institution and who shall make a recommendation to the chief executive officer for such dismissal. The employee shall be suspended with pay until he shall have exercised the opportunity to respond as set forth in Subsection 104.03.a. of this chapter and the recommendation has been acted upon by the chief executive officer. The chief executive officer may for good cause continue the suspension, with pay, pending speedy appellate hearing as hereinafter provided. (7-1-93)

b. The chief executive officer must notify the Board, in writing, of his recommendation for dismissal of an employee, concisely stating the reasons therefore. In arriving at the recommendation, the chief executive officer may utilize whatever advice he may require to ascertain the facts in the case. At the same time he makes the recommendation to the Board, the chief executive officer must notify the employee of the recommendation and proceed in the following manner: (7-1-93)

i. The notice from the chief executive officer must be in writing, and may be personally served upon said employee, or be sent by certified mail, return receipt requested, to the designated address of said employee. The notice must contain a concise statement of the charges against the employee and a statement of the right of the employee to appeal the chief executive officer's recommendation (1) through internal procedures as provided by Subsection 104.03 of this chapter or (2) directly to the Board. Should the employee elect to use the internal grievance procedure, he must notify the chief executive officer, in writing, within fifteen (15) days of receipt of the notice given by the chief executive officer. Should the employee appeal directly to the Board, he must notify the Board, in writing to the Office of the State Board of Education, that he so appeals within thirty (30) days from the date of receipt of the notice given by the chief executive officer. The Board may constitute itself as the hearing tribunal may appoint a hearing committee of not fewer than three (3) of its members or may appoint a single hearing officer not a member of the Board, who must be an attorney duly licensed to practice law in this state and who is not an employee of an institution of higher education. (7-1-93)

ii. If the employee timely exercises his right to appeal, the Board must give reasonable notice of the time, place, and nature of the hearing, and the person or persons before whom the same is to be heard. In every such hearing, the employee will have the right to appear on his own behalf or be represented by any other party who has not formerly participated in the matter on behalf of the Board or any other party and to confront and cross-examine witnesses who may appear against him or her. Failure of the employee to appear at the time and place specified in the notice of hearing constitutes a waiver of further proceedings and the employee may be forthwith terminated by the Board. (7-1-93)

iii. The accused employee has the right to testify in his own behalf, but is not required to do so, and may introduce in his behalf any evidence, oral or documentary, which may be relevant or material to his defense and the issue of whether good cause for dismissal exists. (7-1-93)

iv. With respect to the admissibility of evidence, the hearing tribunal, committee or officer, as the case may be, is governed and controlled by the provisions of Section 67-5210, Idaho Code, or as the same may be hereafter amended. (7-1-93)

v. A stenographic or electronic recording of the proceedings will be taken and filed with the Board, and such record will be made accessible to the employee. (7-1-93)

vi. The institution, agency, school, or office by which the employee is employed has the right to be represented by counsel of its selection at the hearing and is entitled to present witnesses and evidence against the employee. Such counsel has the right to cross-examine the employee (if he testifies on his own behalf). (3-19-93).

vii. The hearing tribunal by a majority of its membership, a hearing committee by a majority of its membership, or a hearing officer, must make written findings on the material facts presented and a recommendation for the continuance or termination of the employee's term of employment, and may make any supplementary suggestions it deems proper concerning the disposal of the case. The original of such findings and the recommendations, together with any supplementary suggestions, must be delivered to the Board and a copy thereof to the employee. If minority findings, recommendations, or suggestions are made, they must be similarly treated. (7-1-93)

c. Upon receipt of the findings and recommendations, the Board must, by a majority of the total membership, approve, reject, or amend such findings, recommendations, or suggestions, if any, or may remand the report to the same tribunal for additional evidence in reconsidering its findings, recommendations, or suggestions, if any. Reasons for approval, rejection, or amendment of such findings, recommendations, or suggestions will be stated in writing and communicated to the employee. (7-1-93)

d. If, under extraordinary circumstances, the Board itself initiates dismissal proceedings against an employee, it must, by majority vote, direct the chief executive officer or any other administrator as may be appropriate to follow procedures for removal of said employee as outlined in Subsection 204.06.b.i. In such case, the Board must appoint a single hearing officer according to criteria stated in Subsection 204.06.b.i. (7-1-93)

**07. Nontenured Faculty.** Nontenured faculty members who are notified that they will not be reappointed or that the succeeding academic year will be the terminal year of appointment, in accordance with the provisions of Section 202, are not entitled to a statement of the reasons upon which the decision for such action is based. No hearing to review such a decision will be held unless the affected faculty member submits in writing to the Board factual allegations that the decision to terminate was made for legally impermissible reasons, and requests a hearing to review these allegations. Such allegations must be heard under the same procedures as in the case of dismissal for cause, with the following exceptions: (7-1-93)

a. The burden of proof is upon the affected faculty member to establish at such hearing that the decision in question was based on his exercise of rights guaranteed by the laws or constitution of this state or the United States; and (7-1-93)

b. The Board need not state the reasons for the questioned decision or offer evidence in support thereof unless the affected faculty member presents a prima facie case in support of his allegations. (7-1-93)

**08. Award Of Tenure.** The awarding of tenure to an eligible faculty member is made only by a positive action of approval by the Board upon the recommendation of the president of the institution. The president must give notice in writing to the faculty member of the Board's approval or denial of tenure status no later than one (1) week following the meeting of the Board at which the action was taken. Notwithstanding any provisions in these policies to the contrary, no person will be deemed to have been awarded tenure because notice is not given or received by the times prescribed in any sections of these policies. No faculty member may construe lack of notice of denial of tenure as the awarding of tenure. If the president has not given notice to the faculty member as provided for in these policies, it is the duty of the faculty member to make inquiry to ascertain the decision of the Board and the president. (7-1-93)

**09. Dismissal Of Administrators.** Dismissal or demotion of administrators, or non-teaching personnel before the expiration of the stated period of appointment or employment will be only for good cause shown, as determined by appropriate administrative officers to whom this responsibility is delegated by the chief administrative officer of the institution and in case of such dismissal or demotion any appeal shall be reviewed by the chief administrative officer of that institution. (7-1-93)

## **205. INTERPRETATIONS RELATING TO TENURE.**

The prior service in the institution of a nontenured faculty member holding academic rank who has left the institution and is subsequently reappointed after a lapse of not more than three (3) years may be counted toward eligibility for the

award of tenure, except that the faculty member may be required to serve additional years before being reviewed for tenure status. Eligibility for the award of tenure must be clarified in writing before reappointment. A tenured faculty member who has left the institution and is subsequently reappointed after a lapse of not more than three (3) years must have tenure status clarified in writing by the president or his designee before appointment. The faculty member may be reappointed with tenure, or may be required to serve additional years before being reviewed for tenure status. Before a nontenured faculty member holding academic rank is moved from one position in the institution to another, the member must be informed in writing by the academic vice president, after consultation with the receiving department, as to the extent to which prior service may count toward eligibility for tenure status. No faculty member's tenure in a discipline may be adversely affected by the reorganization of the administrative structure. A faculty member's tenure is not affected by reassignment of academic responsibilities. When a tenured faculty member is serving as department chairman, college dean, or in some other administrative or service capacity, retention of membership, academic rank, and tenure in the subject-matter department or similar unit is maintained. Should the administrative or service responsibilities terminate, the member takes up regular duties in the discipline within which membership, academic rank, and tenure was retained. (7-1-93)

**206. -- 249. (RESERVED).**

**250. FINANCIAL EXIGENCY POLICY.**

The Board recognizes that in order to discharge its responsibilities for the agencies, institutions, school, office, or department under its governance, it may become necessary to curtail, modify, or eliminate some of the programs of the agencies, institutions, school, office, or department due to unfavorable economic conditions. The Board further recognizes that it must dedicate its resources to the achievement of the purposes and goals of its agencies, institutions, school, office, and department. As used here, "financial exigency" means a demonstrably bona fide, financial crisis which adversely affects an agency, institution, school, office, or department as a whole, or one (1) or more programs, or other distinct units. A state of financial exigency exists only upon Board declaration. (7-1-93)

**251. STAFF REDUCTION PROCEDURES.**

**01. Written Resolution.** The Board must take action by written resolution setting forth the basis for its decision to implement a staff reduction, after notice and hearing, at a regular or special meeting of the Board. (7-1-93)

**02. Financial Exigency.** An employee may be laid off as a result of financial exigency. (7-1-93)

**03. Good Faith Requirement.** A reduction in force must be done equitably, in good faith, and in a systematic manner directly related to the financial exigency. (7-1-93)

**04. Reduction In Force Program.** After active consultation with the employees, including faculty, professional staffs, and classified personnel, the chief executive officer of each agency, institution, school, office, or department must prepare and recommend to the Board a program consisting of various alternatives to implement staff reduction procedures. When developing this program, consideration must be given to the necessity and manner of reducing the employment force, the appropriate unit or subunit to be reduced in force, and the criteria for identifying the employees who are to be laid off. The Board must consider and approve a program to implement its decision prior to the effective date of any layoffs. (7-1-93)

**05. Advisory Committees.** Each of the institutions may establish a committee, which may include representatives of the administration, faculty, staff or students, to advise the chief executive officer on the need for declaring a state of financial exigency and possible remedies therefor. (7-1-93)

**252. APPLICATION FOR REDUCTION IN FORCE.**

A reduction in force may occur in the following manner and may be the same or may differ from one (1) agency, institution, school, office, or department to another: (7-1-93)

**01. By Entire Entity.** Scope. Across an entire agency, institution, school, office, or department; or (7-1-93)

**02. By Subunit.** By subunit within an agency, institution, school, office, or department, such as a college, school, academic department, administrative department, division, office, bureau, discipline, or specialty within a discipline; or (7-1-93)

**03. Any Combination.** By any combination of Subsection 252.01 and 252.02. (7-1-93).

**253. (RESERVED).**

**254. CLASSIFIED EMPLOYEES.**

Any reduction in force affecting Board employees subject to the Idaho classified personnel system will be made pursuant to Rule 14 of the Rules of the Idaho Personnel Commission. The reduction in force will be made by

organizational unit. The organizational units of the Board for this purpose are Boise State University, Idaho State University, Lewis-Clark State College, the Office of the State Board of Education, the State Department of Education, the State School for the Deaf and the Blind, the Division of Vocational Education, the Division of Vocational Rehabilitation, Eastern Idaho Technical College, and the Idaho Educational Public Broadcasting System. (7-1-93)

#### **255. UNIVERSITY OF IDAHO CLASSIFIED EMPLOYEES.**

The rules of the Idaho Personnel Commission must be used to differentiate among University of Idaho classified employees within the unit or subunit being reduced in force, provided, however, that employees do not have a right of appeal to the Idaho Personnel Commission. (7-1-93)

#### **256. STAFF REDUCTION CRITERIA.**

In making any staff reduction recommendation to the Board, the chief executive officer must utilize as the first criterion the preservation of the quality and effectiveness of the programs of the agency, institution, school, office, or department. Consequently, those employees who are deemed to be of key importance to the specific program will be retained in preference to other employees, whatever their status. Programs, for the purposes of the subsection, include, but are not limited to, academic, non-instructional, maintenance, administrative, and other support areas. Other criteria that must be considered include but are not limited to tenure, rank, time in rank, length of service, field of specialization, maintenance of necessary programs or services, maintenance of affirmative action programs, and quality of service and work. (7-1-93)

#### **257. FORM OF NOTICE.**

The Board recognizes that any layoff may be a severe economic and personal loss to an employee. Therefore, and within the time frame provided in Section 258 of this chapter, the agency, institution, school, office, or department chief executive officer must give notice in writing to employees who are affected by a reduction in force, which notice must include the effective date of the layoff; a statement of the reasons for the Board's action to declare a financial exigency; the basis, the procedures, and the criteria used to lay off an employee; any opportunity for reconsideration or appeal, including access to appropriate documentation, and the issues that may and may not be considered; and the reinstatement rights of the employee. (7-1-93)

#### **258. TIME OF NOTICE.**

Each agency, institution, school, office, or department must make every effort to give as much notice as is practical in light of the financial exigency to each employee in advance of the effective date of the layoff. Yet, the legislative appropriation process and the subsequent analysis needed before the Board declares a condition of financial exigency and receives, considers, and approves implementing programs may allow little time for official notice of layoff. The active consultation with its employees that the Board requires of each agency, institution, school, office, or department should give to each employee as much actual, informal notice of impending action as is humanly possible under the circumstances. However, the Board is also aware that under some circumstances the decision to declare a condition of financial exigency is based on estimated revenues, rather than on actual revenues. Because of this the Board encourages the longest time of notice possible under the circumstances to any employee who is to be laid off. However, the Board can and does bind each agency, institution, school, office, or department under its governance to the following minimum written notice of layoff: (7-1-93)

**01. General Notice.** To all employees, except classified employees, not less than thirty (30) calendar days notice in advance of consideration of a recommendation of layoff by the chief executive officer of the institution to the Board. (7-1-93)

**02. Classified Employees.** To employees subject to the Idaho classified personnel system and to University of Idaho classified employees, not less than sixty (60) calendar days before the effective date of the layoff. (7-1-93)

**03. Exempt Contract Employees And Nontenured Faculty.** To exempt employees serving under a contract of employment for a fixed term and to nontenured faculty members occupying permanent faculty positions, not less than sixty (60) calendar days before the effective date of the layoff. (7-1-93)

**04. Tenured Faculty.** To tenured faculty members occupying permanent faculty positions, a notice of layoff as stipulated in Section 258, with the effective date of layoff being one (1) full semester after the semester in which exigency is declared. An individual institution may, at its option, allow up to a full year's notice. (7-1-93)

**05. Pleasure Of The Board Employees.** To employees serving at the pleasure of the Board, thirty (30) calendar days before the effective date of the layoff. (7-1-93)

## **259. APPEAL RIGHTS -- CLASSIFIED EMPLOYEES.**

A layoff of employees subject to the Idaho classified personnel system and University of Idaho classified employees is a grievable matter, but unless otherwise required by law or regulation, the grievance procedure does not delay the effective date of the layoff. The decision of the chief executive officer of the agency, institution, school, office, or department is final and not appealable to the Board. In the event that such appeal or grievance procedures do not currently exist, each agency, institution, school, office, or department must establish such procedures. (7-1-93)

## **260. APPEAL RIGHTS -- NONFACULTY EMPLOYEES.**

**01. Exempt Contract Employees.** In most instances, a reduction in force of employees serving under a contract of employment for a fixed term pursuant to Subsection 102.02 of this chapter will be accomplished by nonrenewal of the contract of employment rather than by layoff during the term of employment. Nonrenewal under these circumstances is not appealable at the agency, institution, school, office, or department, nor is it appealable to the Board. In the event an employee serving under a contract of employment for a fixed term is laid off during the term of employment, that employee is entitled to use the appeal procedure of the agency, institution, school, office, or department. For this purpose, each agency, institution, school, office, or department, must establish its own appeal or grievance procedure in the event such procedure does not currently exist. The employee must notify the chief executive officer, in writing, within fifteen (15) days of receipt of the notice of layoff, of his intent to use the internal appeal procedure. The decision of the chief executive officer of the agency, institution, school, office, or department following the appeal procedure is final and not appealable to the Board. Use of the appeal procedure does not delay the effective date of the layoff. (7-1-93)

**02. Pleasure Of The Board Employees.** Notwithstanding the provisions of Subsection 260.01, termination of employees serving at the pleasure of the Board pursuant to Subsection 101.02.a. of this chapter in furtherance of a reduction in force is not appealable. (7-1-93)

## **261. APPEAL RIGHTS -- TENURED AND NONTENURED FACULTY.**

**01. Nontenured Faculty.** Nontenured faculty members occupying permanent faculty positions who are laid off are entitled to use the appeal procedure of the institution if the procedural requirements of requesting such are met. The decision of the chief executive officer, after reviewing the final written recommendation of the hearing body, is final and not appealable to the Board. If a nontenured faculty member is given notice of nonreappointment pursuant to Section 202 of this chapter in furtherance of a reduction in force, that action is not appealable except as provided in Subsection 202.05. (7-1-93)

**02. Tenured Faculty.** A tenured faculty member is entitled to use one or the other of the following appeal procedures, but not both: (7-1-93)

a. A tenured faculty member may file a written request of appeal to the chief executive officer of the institution within fifteen (15) calendar days of certified receipt of the notice of intention of the chief executive officer to recommend layoff to the Board. In the written request, the tenured faculty member must set down the grounds upon which the layoff is alleged to be improper and ask for an informal resolution of the issue in advance of final action by the Board. If an informal resolution is not reached, the tenured faculty member may appear before the Board prior to its final action on the chief executive officer's recommendation for a layoff. The appearance before the Board will be informal and is not a contested case. The decision of the Board is final; or (7-1-93)

b. Following final action of the Board, the tenured faculty member so affected is entitled to use the appeal procedure of the institution if the procedural requirements of requesting such are met. The decision of the chief executive officer, after reviewing the written recommendation of the hearing body, is final and not appealable to the Board. In the event the chief executive officer determines that his recommendation was made in error, a corrective recommendation must be made to the Board. (7-1-93)

## **262. APPEAL PROCEDURE -- TENURED AND NONTENURED FACULTY.**

Faculty members, excluding part-time and temporary faculty, who are recommended for layoff are entitled to a prompt hearing if they request the same in writing within fifteen (15) calendar days of certified receipt of notification. For this purpose, each institution must establish an appeal procedure in the event such procedure does not currently exist. The hearing procedures must ensure a prompt and expeditious hearing that is fair and unbiased, but the procedural requirements of formal adjudication are not required. The final written recommendation of the hearing body must be conveyed to the chief executive officer. Use of the hearing procedure does not delay the effective date of the layoff. (7-1-93)

**01. Hearing Standard.** The hearing body established must evaluate whether the established and

approved procedures were followed and appropriate criteria applied in arriving at the decision to lay off a faculty member. (7-1-93)

**02. Limitations Upon Review.** The hearing body will not review the Board's decision or the funding distribution among and within the institution(s). (7-1-93)

### **263. STANDARD OF REVIEW.**

The sole basis on which to contest a layoff of employees subject to the Idaho classified personnel system and of University of Idaho classified employees is compliance with the rules of the Idaho Personnel Commission where applicable, and compliance with these rules and the program for reduction in force approved by the Board. The sole basis to contest a layoff of tenured faculty members, nontenured faculty members, and nonfaculty employees serving under a contract of employment for a fixed term is compliance with these rules and the program for reduction in force approved by the Board. The decision of the Board pursuant to Section 100 of this chapter is judgmental or discretionary and is not subject to contest by any employee in any grievance or appeal procedure. (7-1-93)

### **264. LAYOFF ROSTER FOR CLASSIFIED EMPLOYEES.**

An agency, institution, school, office, or department laying off employees subject to the Idaho classified personnel system must prepare and distribute a listing of retention point scores of employees in classes to be affected by a layoff as required by the rules of the Idaho Personnel Commission. The Idaho Personnel Commission will maintain the layoff roster. A classified employee reinstated from a layoff roster will be paid at a pay grade and step consistent with the rules of the Idaho Personnel Commission in effect at the time of reinstatement. (7-1-93)

**01. University Of Idaho.** The University of Idaho will maintain a layoff roster in the event of a layoff of University of Idaho classified employees consistent with the rules of the Idaho Personnel Commission. (7-1-93)

**02. Benefits During Layoff.** An employee who is laid off may continue to contribute toward and receive the benefits of any state insurance program if the laws, rules, regulations, policies, and procedures governing the administration of such insurance program so permit. (7-1-93)

**03. Leave Credit.** An employee who has been laid off and who accepts reemployment at an agency, institution, school, office, or department must be credited with any sick leave which the employee had accrued as of the date of layoff, and with any annual leave which the employee had accrued as of the date of layoff and for which the employee has not received payment. (7-1-93)

### **265. REINSTATEMENT RIGHTS FOR TENURED FACULTY.**

In cases of layoff of tenured faculty members occupying permanent faculty positions, the position concerned may not be filled by replacement within a period of three (3) years from the effective date of the layoff unless the tenured faculty member has been offered a return to employment in that position and has not accepted the offer within thirty (30) calendar days after the offer is extended. (7-1-93)

**01. Refusal Of Reinstatement Offer.** If an offer of reinstatement is not accepted, the tenured faculty member's name may be deleted from the reinstatement list, and, if so deleted, the Board has no further obligation to the faculty member. (7-1-93).

**02. Benefits During Layoff.** A tenured faculty member who is laid off may continue to contribute toward and receive the benefits of any state insurance program if the laws, rules, regulations, policies, and procedures governing the administration of such insurance program so permit. (7-1-93)

**03. Leave Credit.** A tenured member of the faculty who has been laid off and who accepts reemployment at the institution will resume tenure and the rank held at the time of layoff, be credited with any sick leave accrued as of the date of layoff, be paid a salary commensurate with the rank and length of previous service, and be credited with any annual leave which the employee has accrued as of the date of layoff and for which the employee has not received payment. (7-1-93)

### **266. REINSTATEMENT RIGHTS FOR NONTENURED FACULTY AND NONFACULTY EMPLOYEES.**

In cases of layoff of nontenured faculty members occupying permanent faculty positions, and nonfaculty employees occupying permanent positions and not subject to the Idaho classified personnel system, the position concerned may not be filled by replacement within a period of one (1) year from the effective date of the layoff unless the employee has been offered a return to employment in that position and the employee has not accepted the offer within thirty (30) calendar days after the offer is extended. (7-1-93)

**01. Refusal Of Reinstatement Offer.** If an offer of reinstatement is not accepted, the employee's name may be deleted from the reinstatement list, and if so deleted, the Board has no further obligation to the employee. (7-1-93)

**02. Benefits During Layoff.** A nontenured faculty member or a nonfaculty employee who is laid off

may continue to contribute toward and receive the benefits of any state insurance program if the laws, rules, regulations, policies, and procedures governing the administration of such insurance program so permit. (7-1-93)

**03. Leave Credit -- Nontenured Faculty.** A nontenured member of the faculty who has been laid off and who accepts reemployment at the institution will resume the rank held at the time of layoff, be credited with any sick leave accrued as of the date of layoff, be paid a salary commensurate with the rank and length of previous service, and will be credited with any annual leave which the employee had accrued as of the date of layoff and for which the employee has not received payment. (7-1-93)

**04. Leave Credit -- Nonfaculty Employee.** A nonfaculty employee who has been laid off and who accepts reemployment at the institution will be credited with any sick leave the employee had accrued as of the date of layoff, paid a salary commensurate with the length of previous service, and credited with any annual leave which the employee had accrued as of the date of layoff and for which the employee has not received payment. (7-1-93)

## **267. BOARD REVIEW.**

Notwithstanding the appeal provisions of Sections 259, 260, 261, and 262 of this chapter, an employee may elect to petition the Board to review the final action of the agency, institution, school, office, or department. Any written petition for review must be filed at the Office of the State Board of Education within fifteen (15) calendar days after the employee receives notice of final action under the appeal procedure. The Board may agree to review the final action, setting out whatever procedure and conditions for review it deems appropriate, or it may choose not to review the final action. The fact that a review petition has been filed does not stay the effectiveness of the final action, nor does the grant of a petition for review, unless specifically provided by the Board. Board review is not a matter of right. An employee need not petition for Board review in order to have exhausted administrative remedies for the purposes of judicial review. (7-1-93)

## **268. -- 999. (RESERVED).**



**OFFER TIME FOR PUBLIC TESTIMONY: Yes**

<b>Rule Number</b>	<b>Agency/Contact</b>	<b>FINANCIAL AFFAIRS</b>	<b>Proposed Rule Approval</b>
08-01-03 all sections	OSBE Satterlee	Repeal the SBOE financial affairs rules effective July 2001. It is unnecessary to have these in administrative rule. Financial regulations are provided for in Board Policy.	August 2000

**PENDING RULE TEXT – FINANCIAL AFFAIRS  
TO REPEAL THIS RULE ENTIRELY**

08.01.03 - FINANCIAL AFFAIRS OF THE STATE BOARD OF EDUCATION

**000. -- 099. (RESERVED).**

**100. BONDS AND OTHER INDEBTEDNESS.**

**01. General Powers.** The University of Idaho, Idaho State University, Lewis-Clark State College, and Boise State University may, by a majority vote of all the members of the Board, borrow money with or without the issuance of bonds pursuant to Chapters 28 and 40, Title 33, Idaho Code. The Board must act by formal resolution. Such indebtedness is not an obligation of the State of Idaho but is an obligation solely of the respective institutions and the respective board of trustees. Any indebtedness is to be used to acquire a project, facility, or other asset that may be required by or be convenient for the purposes of the institution. Student fees, rentals, charges for the use of the projected facility, or other revenue may be pledged or otherwise encumbered to pay the indebtedness. Refunding bonds also may be issued. (7-1-93)

**02. Attorney General's Opinion.** The Board or the institution may request the Attorney General of Idaho to review and pass upon the validity of a proposed bond issue. If found valid, the bond is an incontestable, binding obligation on the institution. (7-1-93)

**03. Private Sale.** A private sale of bonds is permitted only with the prior approval of the Board as the governing body of the institution. The chief executive officer of the institution must explain why a public sale is not desirable and explain the benefits of a private sale of bonds. (7-1-93)

**04. Responsibility Of The Chief Executive Officer.** The chief executive officer of the institution is responsible for compliance with state law and these provisions when any indebtedness is incurred. (7-1-93)

**05. Eastern Idaho Technical College.** Eastern Idaho Technical College is not authorized to borrow money under chapter 38, title 33, Idaho Code. (7-1-93)

**06. Expenditure Of Excess Revenue.** Expenditure of project revenues over and above that pledged or otherwise encumbered to meet the indebtedness requires prior approval of the Board. (7-1-93)

**101. ACQUISITION, DISPOSAL, AND PROTECTION OF REAL AND PERSONAL PROPERTY AND SERVICES.**

**01. Authority.** The Board may acquire, hold, and dispose of real and personal property pursuant to Article IX, Section 10, Idaho Constitution, and Sections 3-107(2), 33-2202, and 33-2211(3), Idaho Code. (7-1-93)

a. Temporary permits. Permits to make a temporary and limited use of real property under the control of an agency or institution may be issued by the agency or institution without prior Board approval. (7-1-93)

b. Board approval of other transfers. (7-1-93)

i. Leases to use real property under the control of an agency or institution require prior Board approval. (7-1-93)

ii. Easements to make a permanent use of real property under the control of an agency or institution require prior Board approval. (7-1-93)

iii. The transfer by an agency or institution of any other interest in real property requires prior Board approval. (7-1-93)

c. Execution. All easements, deeds, and leases must be executed and acknowledged by the president of the Board or another officer designated by the Board and attested to and sealed by the secretary of the Board as being consistent with Board action. (7-1-93)

**02. Procedure For Acquiring An Interest In Real Property.** (7-1-93)

a. Any interest in real property acquired for the University of Idaho must be taken in the name of the

Board of Regents of the University of Idaho. (7-1-93)

b. Any interest in real property acquired for any other agency or institution under the governance of the Board must be taken in the name of the state of Idaho by and through the State Board of Education. (7-1-93)

c. This does not preclude a foundation or other legal entity separate and apart from an agency or institution under Board governance from taking title to real property in the name of the foundation or other organization for the present or future benefit of the agency or institution. (7-1-93)

d. Acquisition of an option, lease, or any other present or future interest in real property, other than a temporary permit, by or on behalf of an agency or institution requires prior Board approval. (7-1-93)

e. Appraisal. An independent appraiser must be hired to give an opinion of fair market value before an agency or institution acquires fee simple title to real property. (7-1-93)

f. Method of sale -- exchange of property. The Board will provide for the manner of selling real property under its control, giving due consideration to Section 33-601(4), applied to the Board through Section 33-2211(5), and to Chapter 3, Title 58, Idaho Code. The Board may exchange real property under the terms, conditions, and procedures deemed appropriate by the Board. (7-1-93)

**03. Lease Of Office Space.** Leases of office space by any agency or institution except the University of Idaho are acquired by and through the Department of Administration pursuant to Section 67-5708, Idaho Code. All leases of office or classroom space by any agency or institution require prior approval of the Board. (7-1-93)

**04. Personal Property And Services.** (7-1-93)

a. Purchasing procedures. All property that is not real property must be purchased consistent with Sections 67-5715 through 67-5737, Idaho Code, and Executive Order No. 78-6, except that the University of Idaho may acquire such property directly and not through the Department of Administration. Each agency institution must designate an officer with overall responsibility for all purchasing procedures. (7-1-93)

b. Board approval. Purchases of equipment, either in total or through time purchase or other financing agreements, between twenty-five thousand dollars (\$25,000) and one hundred fifty thousand dollars (\$150,000) require prior approval by the executive director. The executive director must be expressly advised when the recommended bid is other than the lowest qualified bid. Purchases exceeding one hundred fifty thousand dollars (\$150,000) require prior Board approval. (7-1-93)

c. Purchase of services. For policies pertaining to purchase of services, see Board Policy Manual, Section V, Subsection I,2. (7-1-93)

**05. Data Processing.** All acquisitions of data processing equipment in amounts between twenty-five thousand dollars (\$25,000) and one hundred fifty thousand dollars (\$150,000) must be reviewed and approved by the executive director prior to such acquisition. Prior Board approval is required for acquisitions over one hundred fifty thousand dollars (\$150,000). Purchases of equipment, supplies, and materials in amounts less than twenty-five thousand dollars (\$25,000) may be acquired through normal institutional processes. (7-1-93)

a. Administrative systems. Acquisition or development of new administrative software or systems that materially affect the administrative operations of the institution by adding new services must be reviewed with the executive director before beginning development. When feasible, such development will be undertaken as a joint endeavor by the four institutions and with overall coordination by the Office of the State Board of Education. (7-1-93).

**06. Disposal Of Property.** Sale, surplus disposal, trade-in, or exchange of property must be consistent with Section 67-5722, Idaho Code, except that the University of Idaho may dispose of such property directly and not through the Department of Administration. (7-1-93)

a. Disposal of property. Sale, surplus disposal, trade-in, or exchange of property with a value greater than fifteen thousand dollars (\$15,000) requires prior Board approval. (7-1-93)

b. First refusal. When the property has a value greater than five thousand dollars (\$5,000), the agency or institution must first make a good faith effort to give other agencies and institutions under Board governance the opportunity of first refusal to the property before it turns the property over to the Department of Administration or otherwise disposes of the property. (7-1-93)

c. Sale of services. The sale of any services or rights (broadcast or other) of any agency or institution not specifically addressed in Subsection 101.06 of this chapter requires prior approval of the Board when it is reasonably expected that the proceeds of such action may exceed fifteen thousand dollars (\$15,000). Any sale of such services or rights must be conducted via an open bidding process or other means that maximizes the returns in revenues, assets, or benefits to the agency or institution. (7-1-93)

d. Inter-agency transfer. Transfer of property from one Board agency or institution to another agency or institution under Board governance may be made without participation by the State Board of Examiners or the Department of Administration, but such transfers of property with a value greater than fifteen thousand dollars (\$15,000) require prior Board approval. (7-1-93)

e. Inventory. An inventory of all items of chattel property valued at two hundred fifty dollars (\$250) or more owned or leased by any agency or institution must be maintained in cooperation with the Department of Administration as required by Section 67-5746, Idaho Code. (7-1-93)

**07. Emergency.** If the executive director of the Office of the State Board of Education finds or is informed that an emergency exists, he may consider and approve a purchase or disposal of equipment or services otherwise requiring prior Board approval. The agency or institution must report the transaction in the financial section of its agenda at the next regular Board meeting together with a justification for the emergency action. (7-1-93)

**08. Insurance.** Each agency and institution must ensure that all insurable real and personal property under its control is insured against physical loss or damage and that its employees are included under any outstanding policy of public liability insurance maintained by the state of Idaho. All insurance must be acquired through the State Department of Administration or any successor entity. (7-1-93)

**09. Vehicle Use.** Vehicles owned or leased by an agency or institution must be used solely for agency or institutional purposes. Employees may not, with certain exceptions, keep institutional vehicles at their personal residences. Exceptions to this policy include the chief executive officers of the institutions and other employees who have received specific written approval from the chief executive officer of the institution or agency. Each agency and institution is to be certain that the state of Idaho, or the Board of Regents in the case of the University of Idaho. (7-1-93)

## **102. CONSTRUCTION PROJECTS.**

**01. Initial Project Approvals.** Without regard to the source of funding, proposals by any agency or institution under the governance of the Board to make capital improvements, either in the form of renovation or addition to or demolition of existing facilities, when the cost of the project is estimated to be between fifty thousand dollars (\$50,000) and one hundred thousand dollars (\$100,000), must first be submitted to the executive director for review and approval. Without regard to the source of funding, proposals by any agency or institution under the governance of the Board to make capital improvements, either in the form of renovation or addition to or demolition of existing facilities or construction of new facilities, when the cost of the project is estimated to exceed one hundred thousand dollars (\$100,000), must first be submitted to the Board for its review and approval. Budgets for maintenance, repair, and upkeep of existing facilities must be submitted for Board review and approval as a part of the annual operating budget of the agency or institution. Specific projects requiring prior Board approval (as noted in the preceding paragraph) may be listed in the operating budget with a brief description when it is presented to the Board for approval, and if approved by the Board, may be undertaken. (7-1-93)

**02. Fiscal Revisions To Previously Approved Projects.** Revised costs up to fifty thousand dollars (\$50,000) or two percent (2%) of the project cost (whichever is more) do not require additional approvals. Changes in project costs between fifty thousand dollars (\$50,000) and one hundred thousand dollars (\$100,000) or between two percent (2%) and five percent (5%) of project cost (whichever is more) must first be submitted to the executive director for review and approval. Changes in project costs of more than one hundred thousand dollars (\$100,000) or five percent (5%) of project cost (whichever is more) must first be submitted to the Board for its review and approval. (7-1-93)

### **03. Construction Contracts.** (7-1-93)

a. The award of contracts for projects under the primary supervision of the University of Idaho or other Board agency; or (7-1-93)

b. The award of contracts for projects under the primary supervision of the University of Idaho or other Board agency or institution between fifty thousand dollars (\$50,000) and one hundred thousand dollars (\$100,000) is subject to the review and approval of the executive director. (7-1-93)

c. The award of contracts for projects under the primary supervision of the University of Idaho or other Board agency; or (7-1-93)

d. If a construction project is to be administered through a construction management contract where multiple construction contracts are issued by the construction manager, the Board's approval applies to the total project budget, the sum of all contracts, in excess of one hundred thousand dollars (\$100,000). (7-1-93)

e. If the executive director of the Board is informed that an emergency exists, he may consider and approve a construction contract otherwise requiring Board approval. The agency or institution must report the transaction in its agenda at the next regular Board meeting together with a justification for the emergency action. (7-1-93)

**04. Change Orders.** All change orders altering substantially the use of the project facility require the following approval: (7-1-93)

a. All change orders on projects under the primary supervision of a Board agency or institution that increase the project cost by twenty-five thousand dollars (\$25,000) but less than one hundred thousand dollars

(\$100,000) require prior approval of the executive director. (7-1-93)

b. All change orders on projects under the primary supervision of a Board agency or institution that increase the project cost by one hundred thousand dollars (\$100,000) or more require prior approval of the Board. (7-1-93)

c. If the executive director of the Board is informed that an emergency exists, he may consider and approve a change order otherwise requiring prior Board approval. The agency or institution must report the transaction in its agenda at the next regular Board meeting together with a justification for the emergency action. (7-1-93)

**05. Project Acceptance.** Projects under the supervision of the Department of Administration are accepted by the Department on behalf of the Board and the state of Idaho. Projects under the supervision of an agency or institution are accepted by the agency or institution and the project architect. Projects under the supervision of the University of Idaho are accepted by the University on behalf of the Board of Regents. (7-1-93)

**06. Statute And Code Compliance.** (7-1-93)

a. All projects must be in compliance with Section 504 of the Rehabilitation Act of 1973 and must provide access to all persons. (7-1-93).

b. All projects must be in compliance with applicable state and local building and life-safety codes and applicable local land-use regulations as provided in chapter 41, title 39, and Section 67-6528, Idaho Code. (7-1-93)

c. In designing and implementing construction projects, due consideration must be given to energy conservation and long-term maintenance and operation savings versus short-term capital costs. (7-1-93)

**07. Selection Of Architects, Engineers, Or Construction Managers.** (7-1-93)

a. When a project is under the primary supervision of the Board of Regents or the Board and its agencies or institutions, contracts for architects, engineers, or construction managers and engineering services are subject to prior executive director review. (7-1-93)

b. When a project is under the primary supervision of the Board of Regents or the Board and its agencies or institutions, contracts for architects, engineers, or construction managers and engineering services are subject to prior Board review and approval when the fee exceeds twenty-five thousand dollars (\$25,000). (7-1-93)

**08. Naming Or Memorializing Buildings.** Naming or memorializing buildings for other than to signify functional use requires prior approval of the Board. (7-1-93)

### **103. GRANTS AND CONTRACTS.**

**01. Approval Of Grant And Contract Applications.** All applications for grants and contracts that require the institution or agency to dedicate current funds or facilities or will obligate the institution or agency or state to dedicate future funding or significant facilities require approval by the executive director. Cost sharing or other types of in-kind matching requirements are not considered as dedicated commitments. If there is no dedicated funding or facilities obligation, the application shall be approved by the chief executive officer of the agency or institution. When requests for approval of such applications are presented to the executive director the following information must be included: (7-1-93)

a. Agency to which application is made. (7-1-93)

b. Amount of the proposal. (7-1-93)

c. Period of the grant or contract. (7-1-93)

d. Purpose of the grant or contract. (7-1-93)

e. Nature of obligations including amount of funds involved or facilities to be committed. (7-1-93)

**02. Acceptance Of Grants And Contracts.** All grants and contracts accepted by the agency or institution must be reported to the executive director as soon as possible following receipt by the agency or institution of official notification. When grant or contract awards are presented to the executive director, the following information must be provided: (7-1-93)

a. Name of grantor or contractor. (7-1-93)

b. Amount of the grant or contract. (7-1-93)

c. Grant or contract period. (7-1-93)

d. Purpose of the grant or contract. (7-1-93)

e. Indicate nature of agency's or institution's obligations in the form of dedicated funding or dedication of significant facilities. If there is none, the following statement should be included: "No future state obligation will be incurred with the acceptance of this grant or contract." (7-1-93).f. A statement on waiver of indirect costs which shall be worded as follows: "Waiver of indirect costs is \$ \_\_\_\_\_" (if exceeding ten thousand dollars (\$10,000)). (7-1-93)

**03. Indirect Cost.** (7-1-93)

a. The following indirect cost rates will be used by agencies and institutions under the governance of the Board for grant and contract services: (7-1-93)

i. For grants and contracts with the federal government, the indirect cost rates are those negotiated between the agency or institution and the federal government. The indirect cost rate may vary from one class of contract services to another, but agencies and institutions are encouraged to maximize indirect cost reimbursement rates. (7-1-93)

ii. For grants and contracts with other state of Idaho departments, the indirect cost rate is twenty percent (20%) of the total direct cost. (7-1-93)

iii. For grants and contracts with Idaho municipal, county, health district, joint planning, and other public non-profit agencies, the indirect cost rate is not less than twenty percent (20%) of total direct cost. (7-1-93)

iv. For grants and contracts with private entities, whether profit or non-profit, indirect costs are charged at either the negotiated federal indirect cost rate for research projects or twenty-five percent (25%) of total direct costs, whichever rate will generate the greater amount of revenue for the institution or the agency. (7-1-93)

b. Reduction or waiver of indirect costs. (7-1-93)

i. For good cause, the chief executive officer or designee of the agency or institution is authorized to reduce or waive indirect costs where indirect costs from a grant or contract are anticipated to be less than ten thousand dollars (\$10,000) over the life of the contract (including renewals or continuations) or when the granting authority does not allow indirect cost reimbursement. The executive director will from time to time require reports of the agencies and institutions on reductions or waivers of indirect costs. (7-1-93)

ii. Where indirect costs are anticipated to total more than ten thousand dollars (\$10,000) over the life of the contract, reduction, or waiver of indirect costs must be reported to the executive director. (7-1-93)

**04. Restrictions On Contract Services.** (7-1-93)

a. Prior to the consideration of any contract for services that is required to be submitted to the Board for approval, all agencies or institutions shall include in the agenda an opinion from legal counsel stating the proposed institution contract obligation is consistent with applicable rules and policies of the State Board of Education. The opinion statement shall include the name, address, and phone number of legal counsel. Contracts presented to the Board for consideration which do not contain this information shall be determined disapproved. Grants and those educational agreements designed for articulation or affiliation shall not be construed to be within the jurisdiction of this subsection unless a fiscal liability is created for the Board, its agencies or institutions. (7-1-93)

b. Research or consultant entities of agencies and institutions under the governance of the Board may not bid on contract services when it appears that the contract services are reasonably available from the private sector. (7-1-93)

c. If the product of contract work is to be privileged or its dissemination restricted, the agency or institution may not undertake the contract work without the written approval of the chief executive officer of the agency or institution. The chief executive officer must report all such approvals to the Board at its next scheduled meeting. (7-1-93)

**104. -- 999. (RESERVED).**

**OFFER TIME FOR PUBLIC TESTIMONY: Yes**

<b>Rule Number</b>	<b>Agency/Contact</b>	<b>INTELLECTUAL PROPERTY &amp; CONFLICT OF INTEREST</b>	<b>Proposed Rule Approval</b>
08-01-09 all sections	OSBE Satterlee	Repeal the SBOE intellectual property rules effective July 2001. It is unnecessary to have these in administrative rule. Intellectual property and conflict of interest regulations are provided for in Board Policy.	August 2000

**PENDING RULE TEXT – INTELLECTUAL PROPERTY AND CONFLICT OF INTEREST**

**TO REPEAL THIS RULE ENTIRELY**

08.01.09 - INTELLECTUAL PROPERTY AND CONFLICT OF INTEREST  
THE STATE BOARD OF EDUCATION

**000. -- 099. (RESERVED).**

**100. OBJECTIVES AND PURPOSES.**

The State Board of Education, on behalf of the state of Idaho, and the Board of Regents, on behalf of the University of Idaho, (hereinafter collectively referred to as the State Board) recognize the dynamic relationship between research and education in postsecondary institutions. The State Board recognizes that inventions, discoveries, and published works of commercial importance may be the natural outgrowth of research. The State Board intends to promote the use of intellectual properties for the public good. While postsecondary institutions must retain open intellectual inquiry, at times this openness is juxtaposed with the obligations to contribute to the economic growth and development of Idaho and the nation. The following intellectual property policies balance the institutional obligations to preserve open inquiry and realize the commercial value of intellectual property produced by employees of the State's postsecondary educational institutions. (7-1-93)

**101. INTELLECTUAL PROPERTY.**

**01. Patents.** (7-1-93)

a. Claim of ownership interest. The State Board of Education, on behalf of the state of Idaho, and the Board of Regents, on behalf of the University of Idaho, claim ownership of any invention or patentable discovery developed under any of the following circumstances: (7-1-93)

i. Arising from any work performed by an employee of the State Board during the course of his duties to the agency or institution; (7-1-93)

ii. Arising from any work performed by an employee of the State Board using state resources not similarly available to members of the general public; or (7-1-93)

iii. Arising from any work performed by an employee of the State Board under contract in a program or project sponsored by a State Board agency or institution or a closely associated research foundation. (7-1-93)

b. Disclaimer of ownership interest. The State Board of Education and the Board of Regents of the University of Idaho claim no ownership interest in any invention or patentable discovery developed by their employees or contractors under the following circumstances: (7-1-93)

i. When the work is performed outside their assigned duties; and (7-1-93)

ii. When the employee/contractor is without benefit of State facilities except those available to members of the general public, such as libraries. (7-1-93)

c. Agency policy review. Agencies and institutions under the governance of the State Board must secure to the state of Idaho their ownership interest in inventions and patentable discoveries. Agency and institutional policies setting out patent administration, including evaluating, financing, assignment, marketing, protection, and the division and use of royalties, as well as amendments thereto, must be submitted to the State Board for its review and approval. (7-1-93)

d. Condition of employment. State Board employees and contractors must, as a condition of employment or contract, agree and adhere to the State Board approved policy on inventions and patentable discoveries. (7-1-93)

## **02. Copyrights. (7-1-93).**

a. When employees or contractors are expressly directed to produce specific work for publication in the course of their employment, the agency or institution may reserve the right to copyright the publication in the name of the state of Idaho or the University of Idaho or to publish such work without copyright. (7-1-93)

b. Except as noted in Subsection 101.02.a. above, the State Board of Education and the Board of Regents of the University of Idaho claim no ownership interest in works submitted for publication by State Board employees and contractors. Employees and contractors retain the right to copyright and publish their own works. That is, as a general rule, all rights to copyrightable material are the property of the creator. The distribution of royalties, if any, is a matter of arrangement between the creator and his publishers or licensees. However, institutions subject to this rule may elect, by contract or policy, to claim an interest in copyrightable material produced, in whole or part, by their employees or contractors. For example, different treatment may be accorded by an institution in cases of specific contracts providing for an exception, in cases where the constituent institution or sponsor may employ personnel for the purpose of producing a specific work, where different treatment is deemed necessary to reflect the contribution of the institution to the work as in the case of software, mask works for microcircuit chips, or audiovisual material, or where a sponsored agreement requires otherwise. (7-1-93)

## **03. Intellectual Property Transfer. (7-1-93)**

a. The State Board of Education and the Board of Regents of the University of Idaho delegate to Idaho's postsecondary educational institutions the right to transfer and convey ownership in intellectual properties developed within the institutions under the patents and copyright rule. This rule will allow the institutions to play appropriate roles in knowledge transfer and economic growth and development. Under this rule, the institutions may: (7-1-93)

i. Grant rights to owned intellectual properties to research foundations for further development or transfer. (7-1-93)

ii. Themselves act as licensors to convey intellectual property rights to commercial ventures. (7-1-93)

iii. Grant exclusive rights to a licensee. (7-1-93)

iv. Collect and disburse license payments to inventors and their departments and colleges, as well as to their institutions, for the general support of research within the institutions. (7-1-93)

v. Permit institutional employees the right to participate in ownership and governance of companies licensed by the institutions to produce and market the discoveries, provided the conflict of interest rules are followed (see Section 101.04). (7-1-93)

b. Each of Idaho's postsecondary institutions shall, within twelve (12) months of the promulgation of this rule, submit its policy on the transfer of intellectual properties (technology transfer) for State Board review and approval. At a minimum, the policy should include: (7-1-93)

i. The name of the institutional position (or office) with the authority and responsibility for carrying out the policy and binding the institution contractually. (7-1-93)

ii. Policy and plans for patent acquisition (i.e., who initiates, who pays the lawyers, and an enumeration of the duties, responsibilities, and a process for settling debates). (7-1-93)

iii. The range of allowable institutional involvement in the transfer process (i.e., from licensing to acceptance of institutional ownership interests, continued development in institutional facilities for the benefit of the licensee, business planning, or production assistance). (7-1-93)

c. The appropriate officer of each postsecondary institution shall report, two (2) weeks in advance of the State Board meeting, on patent, copyright, and technology transfer activities that have occurred at the institution since the prior meeting of the Board. With respect to patents, that report shall include what public notice was given prior to the licensee(s) being selected. Further, that report will also indicate whether employees of the institution or its respective research foundation have a financial interest in the company to which the intellectual property was transferred. Terms of any license or technology transfer contract will be made available in confidence upon request for inspection by the State Board. (4-1-94)

## **04. Conflict-Of-Interest Rule. (7-1-93)**

a. All decisions of employees of the State Board concerning transfer of intellectual property are to be made solely on the basis of promoting the best interest of Idaho's postsecondary education and the public good. (7-1-93)

b. In the event that an employee of the State Board shall be called upon to consider a transaction involving a postsecondary educational institution under the State Board's governance or an organization with which an employee of the State Board is "affiliated," such employee, as soon as he has knowledge of the transaction, shall: (7-1-93)

i. Disclose fully the precise nature of his interest or involvement in such transaction and/or such organization; and (7-1-93)

- ii. Refrain from participation in the institution's consideration of the proposed transaction. (7-1-93)
- c. The employees shall also disclose to the institution on a continuing basis all their relationships and business affiliations that reasonably could give rise to a conflict of interest because of their respective duties and responsibilities. (7-1-93)
- d. For the purposes of this conflict-of-interest rule, an employee is "affiliated" with an organization if he or a member of his immediate family (i.e., his spouse, parents, children, brothers, and sisters): (7-1-93)
  - i. Is an officer, director, trustee, partner, employee, or agent of such organization; (7-1-93)
  - ii. Is either the actual or beneficial owner of more than one percent (1%) of the voting stock or controls interest of such organization; or (7-1-93)
  - iii. Has any other direct or indirect dealings with such organization from which he knowingly is materially benefited. It shall be presumed that a person is "materially benefited" if he receives, either directly or indirectly, cash or other property (exclusive of dividends and interest) in excess of one hundred dollars (\$100) in any year in the aggregate. (7-1-93)
- e. All disclosures required to be made hereunder must be directed, in writing, to the president of the institution, or his designee, who shall have responsibility for administration of this conflict-of-interest rule. The employees shall excuse themselves from any and all potential conflicts of interest. All known violations, disputes, and other issues arising out of the application of this rule to employees of the State Board shall be referred to the State Board for appropriate action. If the State Board determines that a conflict of interest has occurred, it may take action against the employee pursuant to IDAPA 08.01.02, Section 104, "Personnel Rules," Dismissal for Cause. (7-1-93)
- f. Each institution shall ensure that all contractors retained to facilitate the transfer of intellectual property conform with this conflict-of-interest rule. (7-1-93)

**102. -- 999. (RESERVED).**



## OFFER TIME FOR PUBLIC TESTIMONY: Yes

Rule Number	Agency/Contact	ACHIEVEMENT STANDARDS	Proposed Rule Approval
08.02.03 105 & 08.02.03 new	K-12 Ed Guerra	Changes already approved standards for 9-12 from “exiting” standards to “achievement” standards, and incorporates already approved 9-12 Standards by reference. Additionally, establishes achievement standards for grades K-8. <b>No changes to the K-8 Standards since initial approval in August. Approval of this pending rule text, because it incorporates the Standards by reference, includes final approval of the Standards as well.</b>	April 2000 & August 2000

**PENDING RULE TEXT – ACHIEVEMENT (EXITING) STANDARDS**  
08.02.03 – RULES GOVERNING THOROUGHNESS

**004. INCORPORATION BY REFERENCE.**

The State Board of Education adopts and incorporates into its rules:

**01. Incorporated Document.** The Idaho State Board of Education K-8 State Achievement Standards approved **October 19, 2000.** ( )

**02. Incorporated Document.** The Idaho State Board of Education 9-12 State Achievement Standards approved July 1, 1999. ( )

**03. Document Availability.** The K-8 State Achievement Standards and the 9-12 State Achievement Standards are available at the Idaho State Department of Education at 650 W. State St., PO Box 83720, Boise, ID 83720-0027, and can also be accessed electronically at <http://www.sde.state.id.us/osbe>. ( )

*(break in section continuity)*

**102. INSTRUCTIONAL REQUIREMENTS.**

All schools will deliver a core of instruction and advisement programs (see Section 108, Guidance Programs) for each student in elementary schools, middle schools/junior high and high schools. (4-5-00)

**01. Standards.** All students will meet standards established locally (at a minimum, the standards of the state) through rigorous accountability, which include challenging examinations, demonstrations of achievement, and other appropriate tests and measures. (4-5-00)

**02. Curriculum Guides.** The State Department of Education Curriculum Guides may be used voluntarily and are designed to assist school districts as they develop educational programs and ~~exiting achievement~~ standards. Notwithstanding the above, the State Division of ~~Vocational—Education~~ Professional-Technical Education will prepare curriculum guides and instructional aids for ~~vocational-technical professional-technical~~ education programs in the public schools. (Section 33-118, Idaho Code) ~~(4-5-00)~~ ( )

*(break in section continuity)*

**104. OTHER REQUIRED INSTRUCTION.**

Other required instruction for all students and other required offerings of the school are: (4-1-97)

**01. Elementary Schools (Grades 1-6).** (4-1-97)

a. The following section outlines other information required for all students, as well as other

required offerings of the school:

- Fine Arts (art and music)
- Health (wellness)
- Physical Education (fitness) (4-1-97)
- b. Additional instructional options as determined by the local school district. For example:
  - Languages other than English
  - Career Awareness (4-1-97)

**02. Middle Schools/Junior High Schools.** No later than the end of Grade eight (8) all students will develop parent-approved student learning plans for their high school and post-high school options. The learning plan will be developed by students and parents or guardians with advice and recommendation from school personnel. It will be reviewed annually and may be revised at any time. The purpose of a parent-approved student learning plan is to outline a course of study and learning activities for students to become contributing members of society. A student learning plan describes, at a minimum, the list of courses and learning activities in which the student will engage while working toward meeting the district's graduation standards. The school district will have met its obligation for parental involvement if it makes a good faith effort to notify the parent or guardian of the responsibility for the development and approval of the learning plan. A learning plan will not be required if the parent or guardian requests, in writing, that no learning plan be developed. (4-1-97)

- a. Other required instruction for all students:
  - Health (wellness)
  - Physical Education (fitness) (4-1-97)
- b. Other required offerings of the school:
  - Family and Consumer Science
  - Fine & Performing Arts
  - Vocational-Technical Education
  - Advisory Period (middle school only, encourage in junior high school)
  - Exploratory (middle school only) (4-1-97)
- c. Additional instructional options as determined by the local school district. For example:
  - Languages other than English (4-1-97)

**03. High Schools (Grades 9-12).** Students will maintain a parent-approved student learning plan for their high school and post-high school options. The learning plan will be developed by students and parents or guardians with advice and recommendation from school personnel. It will be reviewed annually and may be revised at any time. The purpose of a parent-approved student learning plan is to outline a course of study and learning activities for students to become contributing members of society. A student learning plan describes, at a minimum, the list of courses and learning activities in which the student will engage while working toward meeting the district's graduation standards. The school district will have met its obligation for parental involvement if it makes a good faith effort to notify the parent or guardian of the responsibility for the development and approval of the learning plan. A learning plan will not be required if the parent or guardian requests, in writing, that no learning plan be developed. (4-1-97)

- a. Other required instructional offerings of the school. Each student must complete credit and exitting achievement standards in at least two (2) of the following areas of instructional offerings:
  - Physical Education (fitness)
  - Humanities
  - Vocational-Technical Education (including work-based learning)
  - Family and Consumer Science
  - Fine and Performing Arts
  - Languages other than English (may include indigenous languages or sign language)
  - (4-1-97)( )
- b. Additional instructional options as determined by the local school district. For example:
  - Journalism (4-1-97)

## 105. GRADUATION FROM HIGH SCHOOL.

Graduation from an Idaho high school requires that: (4-1-97)

**01. Credit Requirements.** All students will demonstrate achievement in the CORE and other required subjects to include forty-two (42) semester credits, one (1) semester equaling one-half (1/2) year. (4-5-00)

**02. Exiting Achievement Standards.** All students will meet locally established subject area exiting achievement standards (using state standards as minimum requirements) demonstrated through various measures of accountability including examinations or other measures. ~~(4-5-00)~~( )

**03. Foreign Exchange Students.** Foreign exchange students may be eligible for graduation by completing a comparable program as approved by the Board of Trustees. (4-5-00)

*(break in section continuity)*

171. -- ~~199,174.~~ (RESERVED).

## 175. K-8 STATE ACHIEVEMENT STANDARDS.

As stated in rule 105.02 and as established in rule 200 of these Thoroughness rules, all students graduating from Idaho public high schools must meet locally established achievement standards. The Idaho State Board of Education 9-12 State Achievement Standards are the minimum standards used by all Idaho school districts to establish a level of achievement necessary to graduate from Idaho's public schools. In order to ensure success in meeting these graduation standards, the Idaho State Board of Education sets forth K-8 State Achievement Standards for all school districts to use in preparing K-8 students to meet the Idaho State Board of Education 9-12 State Achievement Standards. Each school district may set standards more rigorous than these state achievement standards but no district shall use any standards less rigorous than those set forth in these rules.

176. – 199. (RESERVED).

**200. STATE EXITING ACHIEVEMENT STANDARDS.** As stated in rule 105.02 of these Thoroughness rules, all students graduating from Idaho public high schools must meet locally established exiting achievement standards. The standards set forth in the Idaho State Board of Education 9-12 State Achievement Standards and included below in rules 200 through 600, inclusive, are state exiting achievement standards that shall be the minimum standards used by every school district in the state in order to establish a level of academic achievement necessary to graduate from Idaho's public schools. Each school district may set standards more rigorous than these state exiting achievement standards but no district shall use any standards less rigorous than those set forth in these rules. The implementation time for these Exiting Achievement Standards rules is the graduating senior class of 2005. However, these rules are promulgated and effective as of July 1, 1999 to give school districts time to meet the state exiting achievement standards for the graduating class of 2005. Definitions of terms used in the state exiting achievement standards are found at sections 210 through 215 and a glossary of mathematical terms is found at section 216. ~~(4-5-00)~~( )

201—209. (RESERVED).

## **210. EXITING ACHIEVEMENT STANDARDS DEFINITIONS.**

Idaho State Board of Education's Definition of an Exiting Achievement Standard: "Specific subject criteria which, when measured, show a specific level of content knowledge and demonstrated application." ~~(4-5-00)~~( )

## OFFER TIME FOR PUBLIC TESTIMONY: Yes

Rule Number	Agency/Contact	TEACHER CERTIFICATION STANDARDS	Proposed Rule Approval
08-02-02	K-12 Ed Stefanic	Change date reference in rule due to updates in the Standards Manual. <b>Delete the word manual so that only changes to the actual standards will require changes to the rule. Board approval of this rule change, since it incorporates the Standards, includes approval of the Standards as well. The updated sections are summarized below and have not changed since initial Board review in August.</b>	August 2000

**Changes to the Manual include:**

- Updating the name for NNU's Certification Officer
- Address and phone number corrections for school districts across the State
- Adds new States to the NASDTEC Interstate Contract for reciprocity
- Corrects some original publishing errors
- Change to the Standards for an Occupational Specialist Certificate as outlined below:

## 3. Experience/Competence Verification

~~Have at least three years (6000 hours) of full time, successful, recent, gainful employment in the field for which certification is requested, verification of occupational competence by passing an authorized occupational competency test, and be recommended by an occupational advisory council/committee as recorded in its minutes.~~

Have at least journeyman level plus two years of recent, full-time, gainful, related work experience;

OR

Pass approved state or national licensure/certification examination plus three years of recent, full-time, gainful, related work experience (Length and type of work experience in emergency services and health professions will be determined on an individual basis.

If no competency test exists, written recommendation from a representative occupational advisory council/committee and recorded in its minutes is required ~~as stated above~~ to verify occupational competence. ~~Applicants who have passed a state licensure examination may be exempted from further competency testing.~~

**PENDING RULE TEXT – TEACHER CERTIFICATION STANDARDS MANUAL**  
**08.02.02 – RULES GOVERNING UNIFORMITY**

**005. INCORPORATION BY REFERENCE.**

The State Board of Education adopts and incorporates into its rules: (4-5-00)

**.01 Incorporated Document.** The Idaho Department of Education Professional School Personnel Certification Standards ~~Manual Revised on June 17, 1999~~ as approved on October 19, 2000.

(4-5-00) (\_\_\_\_)

**02. Document Availability.** The Idaho Department of Education Professional School Personnel Certification Standards manual is are available at the Idaho State Department of Education at 650 W. State St., PO Box 83720, Boise, Idaho, 83720-0027. (4-5-00) (\_\_\_\_)

## OFFER TIME FOR PUBLIC TESTIMONY: Yes

Rule Number	Agency/Contact	TEACHER EDUCATION PROGRAMS	Proposed Rule Approval
08-02-02 100.01-04	OSBE Toney	Changes the official vehicle for approval of postsecondary teacher education programs from NASDTEC standards to NCATE approved Idaho Standards for the Initial Certification of Professional School Personnel. <b>Board approval of this rule change, since it incorporates the Standards by reference, includes approval of the Standards as well. Two pages of the Standards have changed since they were forwarded to the Board in August, changes appear following the pending rule text.</b>	June 2000

**PENDING RULE TEXT – TEACHER EDUCATION PROGRAM APPROVAL**

## 08.02.02 - RULES GOVERNING UNIFORMITY

**005. INCORPORATION BY REFERENCE.**

The State Board of Education adopts and incorporates into its rules: (4-5-00)

**.01 Incorporated Document.** The Idaho Department of Education Professional School Personnel Certification Standards Manual Revised on June 17, 1999. (4-5-00)

**.02. Document Availability.** The manual is available at the Idaho State Department of Education at 650 W. State St., PO Box 83720, Boise, Idaho, 83720-0027. (4-5-00)

**.03. Incorporated Document.** The Idaho Standards for the Initial Certification of Professional School Personnel as approved on October 19, 2000. ( )

**.04. Document Availability.** The Idaho Standards for the Initial Certification of Professional School Personnel are available at the Office of the State Board of Education, 650 W. State St., PO Box 83720, Boise, Idaho, 83720-0037, and can also be accessed electronically at <http://www.sde.state.id.us/osbe>. ( )

(Break in section continuity)

**100. OFFICIAL VEHICLE FOR APPROVING ~~EXISTING~~ TEACHER EDUCATION PROGRAMS.**

(Section 33-114, Idaho Code) (4-1-97)

**01. The Official Vehicle For The Approval Of ~~Existing~~ Teacher Education Programs.** The official vehicle for the approval of ~~existing~~ teacher education programs will be the ~~current edition of the National Association of State Directors of Teacher Education and Certification (NASDTEC) Standards for State Approval of Teacher Education, as revised, together with the Idaho Supplement to the NASDTEC Standards~~ National Council for Accreditation of Teacher Education (NCATE) approved Idaho Standards for the Initial Certification of Professional School Personnel as approved on October 19, 2000. The Office of Teacher Certification will transmit to the head of each Idaho college or department of education a copy of all revisions to the ~~NASDTEC Standards or amendments by the State Board to the Idaho Supplement~~ Idaho Standards for the Initial Certification of Professional School Personnel. Such revisions will not take effect on approval evaluations of the Idaho program until two (2) years after notification of such revision. The two (2) year deferral may be waived upon written request of the head of the college or department to be evaluated. ~~(4-1-97)( )~~

**02. Effective Date.** The effective date for the NCATE approved Idaho Standards for the Initial Certification of Professional School Personnel ~~approval of NASDTEC programs will be July, following the State Board approval is September 1, 2001.~~ Students with junior or senior standing and currently enrolled in ~~an the~~ institution's program that does not meet the Standards ~~has been denied approval~~ will be eligible for certification in Idaho after successfully completing their program if this program is completed within two (2) years of the September 1, 2001~~July~~ effective date. All ~~others enrolled in~~ programs not meeting the Standards ~~denied approval~~ will be responsible for informing enrolled students of their non-compliance ~~informed of the decision of the State Board of Education.~~ (4-1-97)(      )

**03. Reference Availability.** The ~~NASDTEC Standards for State Approval of Teacher Education Idaho Standards for the Initial Certification of Professional School Personnel, as revised, and the Idaho Supplement to the NASDTEC Standards~~ are incorporated herein by reference and are available for inspection in the ~~State Department of Education, the State Law Library, and the Office of the Director of the Legislative Council~~ Office of the State Board of Education. (4-1-97)(      )

**04. Continuing Accreditation.** The State of Idaho will follow the National Council for Accreditation of Teacher Education (NCATE) model and continuing approval at the end of five (5) years following baseline approval. (4-1-97)

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**Changes to the Idaho Standards for the Initial Certification of Professional School Personnel since the Board review in August appear below.**

**Addition of one sentence (underlined) in Early Childhood Standards as follows:**

**Idaho Standards for  
Blended Early Childhood Education/Early Childhood Special Education  
Teachers**

*In addition to the standards listed here, blended early childhood education/early childhood special education teachers must meet Idaho Core Teacher Standards, Idaho Foundation Standards for Special Education Teachers, and Elementary Standards appropriate to children in grades K-3.*

*The characteristics of development and learning of young children are integrally linked and different from those of older children and adults. Thus, programs serving young children should be structured to support those unique developmental and learning characteristics. The early childhood educator will extend, adapt, and apply knowledge gained in the professional education core for the benefit of children from birth through grade three.*

**Additions (underlined) to the Elementary Education Standards in relation to reading requirements as follows:**

**Idaho Standards for Elementary Education Teachers**

*In addition to the standards listed here, elementary education teachers must meet Idaho Core Teacher Standards.*

**Principle 1: Knowledge of Subject Matter**

**Knowledge**

1. The teacher has a high level of competence in English language arts and understands concepts of language and child development in order to teach reading, writing, speaking, viewing, listening, and thinking skills and to help students successfully apply their developing skills to many different situations, materials, and ideas.
2. **The teacher understands how children learn language, the basic sound structure of the English language, semantics and syntactics, and diagnostic tools and test data to improve student reading ability.**
3. The teacher understands the fundamental concepts and structures of science including physical, life, and earth and space sciences. The teacher understands science as it applies to technology, personal and social perspectives, the history, unifying concepts, and the inquiry processes scientists use in the discovery of new knowledge.
4. The teacher understands major concepts, procedures, and reasoning processes of mathematics that define number systems and number sense, computation, geometry, measurement, statistics and probability, and algebra in order to foster student understanding and use of patterns, quantities, and spatial relationships that can represent phenomena, solve problems, and manage data.
5. The teacher knows the major concepts and modes of inquiry for social studies: the integrated study of history, geography, government/civics, economics, social/cultural and other related areas to promote elementary students' abilities to make informed decisions as citizens of a culturally diverse democratic society and interdependent world.
6. The teacher understands the content, functions, aesthetics, and achievements of the arts, such as dance, music, theater, and visual arts as avenues for communication, inquiry, and insight.
7. The teacher understands the comprehensive nature of students' physical, mental, and social well-being in order to create opportunities for student development and for practicing skills that contribute to good health.
8. The teacher understands human movement and physical activities as central elements to foster active, healthy lifestyles and enhanced quality of life.

9. The teacher understands the connections across the curriculum and within a discipline among concepts, procedures, and applications to motivate students, build understanding, and encourage the application of knowledge, skills, and ideas to real-life world issues and future career applications.
10. The teacher understands the principles and processes of personal skills and group dynamics incorporating respect, caring, honesty, and responsibility that enable elementary students to communicate and interact effectively with peers and adults.

### **Disposition**

1. The teacher recognizes the importance of a school community in which respect, honesty, caring, and responsibility are present.

### **Performance**

1. The teacher effectively demonstrates fundamental knowledge of English language arts, **reading**, science, mathematics, social studies, the arts, health education, and physical education.
2. The teacher creates a balanced curriculum that includes English language arts, **reading**, science, mathematics, social studies, the arts, health education, and physical education.
3. The teacher models respect, honesty, caring, and responsibility, and promotes and nurtures a school environment that fosters these qualities.

## **Principle 2: Knowledge of Human Development and Learning**

### **Knowledge**

1. The teacher understands how learning occurs and that students' literacy and language development influence learning and instructional decisions.

## **Principle 3: Adapting Instruction for Individual Needs**

## **Principle 4: Multiple Instructional Strategies**

## **Principle 5: Classroom Motivation and Management Skills**

## **Principle 6: Communication Skills**

## **Principle 7: Instructional Planning Skills**

## **Principle 8: Assessment of Student Learning**

## **Principle 9: Professional Commitment and Responsibility**

## **Principle 10: Partnerships**



**OFFER TIME FOR PUBLIC TESTIMONY: No**

<b>Rule Number</b>	<b>Agency/Contact</b>	<b>PROFESSIONAL-TECHNICAL SCHOOLS</b>	<b>Proposed Rule Approval</b>
55-01-03 new	PTE Rush	Identifies and sets forth criteria and requirements for the establishment and operation of a professional-technical school in Idaho that qualifies for funding under IC 33-1002G. Includes definitions, approval & component criteria, added cost unit funding, average daily attendance and accountability. Pursuant to public notice, the Division of Professional-Technical Education convened a public hearing at 3:00 p.m. (MT) on October 13, 2000 via the distance learning network to hear testimony regarding IDAPA 55- 0103-0002.	June 2000

**PENDING RULE TEXT – NEW RULE ON PROFESSIONAL-TECHNICAL SCHOOLS****000. LEGAL AUTHORITY.**

The State Board of Education is designated as the State Board for Professional-Technical Education and is responsible to execute the laws of the state of Idaho relative to professional-technical education, administer state and federal funds, and through the administrator of the State Division of Professional-Technical Education, coordinate all efforts in professional-technical education (Section 33-2202 through 33-2212, Idaho Code).

**001. TITLE AND SCOPE.**

**01. Title.** The rules shall be cited as Rules Of Professional-Technical Schools.

**02. Scope.** These rules serve the administration of Professional-Technical Education in Idaho and define the duties of the State Division of Professional-Technical Education.

**002. WRITTEN INTERPRETATIONS.**

Written interpretations of these rules, if any, are on file at the office of the State Division of Professional-Technical Education.

**003. ADMINISTRATIVE APPEALS.**

All appeals under these rules shall be conducted pursuant to the procedures set forth by the State Board of Professional-Technical Education.

**004. (RESERVED)****005. DEFINITIONS.**

**01. Attendance Zones.** For purposes of Section 33-1002G, Idaho Code, each high school is classified as an attendance zone. The attendance zone requirement can be met by having students from at least two (2) high school zones within a district or two (2) high school zones in different districts participate in the professional-technical school.

**02. Dual credit.** Pursuant to Section 33-5109, Idaho Code, dual credit may be granted for Advanced Placement, College Level Examination Program, or Tech Prep class offerings that are approved through an accredited institution of higher education. This does not have to be a one (1) credit for one (1) credit articulation. Competencies from multiple classes can count toward postsecondary credit/credits.

**03. Field Experience.** Paid or unpaid work experience such as business/industry internship, clinical experience, supervised occupational experience, job placement, school-based enterprise, or similar work experience setting. The field experience must be of sufficient duration and depth to add to the technical competencies of the student.

**04. Professional-Technical Schools.** Schools designed to provide high-end, state-of-the-art technical programs that foster quality technical education at the secondary level. Programs and services are directly related to the preparation of high school students for employment in current or emerging occupations that require other than a baccalaureate or advanced degree. These schools are closely linked to postsecondary education, thereby avoiding redundancy and maintaining rigor. They are also closely linked to current business and industry standards to ensure relevance and quality.

**006. - - 099. (RESERVED).**

**100. STATEMENT OF PURPOSE.**

The purpose of this rule is to clearly define general implementation criteria, the criteria for approval for funding, the added cost unit calculation, the procedure to follow in calculating average daily attendance (ADA), the process to follow for fund distribution, and program accountability for Idaho Professional-Technical Schools.

**101. PROFESSIONAL-TECHNICAL SCHOOL GENERAL APPROVAL CRITERIA.** For approval, applying districts/consortiums must meet at least four (4) of the five (5) criteria listed in Section 33-1002G, Idaho Code. Approval criteria:

**01. High School Attendance Zones.** Two (2) or more high school attendance zones.

**02. Dual Credit.**

**03. Field Experience.**

**04. Funded As A Separate School.**

**05. Separate Site Or Cooperative Service Agency.** Located at a separate site or approved by the State Board of Education as a cooperative service agency.

**102. PROFESSIONAL-TECHNICAL COMPONENT CRITERIA.**

**01. Program Criteria.** Professional-technical schools are intended to deliver high-end technical education programs that go beyond the scope of traditional professional-technical education. The lab should be appropriately designed for the type of program and the number of students enrolled. The program should have state-of-the-art equipment, current technology and strong links to business and industry.

**02. Professional-Technical School Program.** Each program of a professional-technical school shall:

a. Be based on industry standards that are measurable using a competency-based evaluation system.

b. Demonstrate a responsiveness to students' needs and to labor market needs.

c. Contain a sequence of instruction that follows a set of industry competencies.

d. Reinforce basic and advanced academic skills.

e. Have at least one (1) dual credit technical course or be approved for postsecondary credit as part of a Tech Prep agreement.

f. Promote access and equity for all students and school personnel.

g. Incorporate active input from an appropriately qualified business/industry technical advisory committee.

h. Ensure that all programs implement instructional delivery methods that use current teaching and industry technologies.

- i. Employ instructors who hold professional-technical certification to teach the occupation and who also hold a related industry-based credential or equivalent.
- j. Promote the development of leadership, interpersonal and other cross-functional workplace skills through professional-technical student organizations or other appropriate means.
- k. Ensure that the instructional setting is appropriate and effective regarding:
  - i. Student-teacher ratios
  - ii. Number of lab work stations
  - iii. Number of quality work-experience sites
  - iv. Safety
  - v. Work-experience agreements
  - vi. Facility maintenance

### **103. APPLICATION PROCESS.**

Applications for professional-technical school funding must be received by the Division of Professional-Technical Education on or before the first Friday in July for the following fiscal year.

### **104. PROFESSIONAL-TECHNICAL SCHOOL ADDED COST UNIT FUNDING.**

Section 33-1002G, Idaho Code, provides school districts an opportunity to establish professional-technical schools that qualify for funding appropriated for the specific purpose of supporting the added cost of professional-technical schools. The funds are appropriated to the State Board for Professional-Technical Education to be expended by the Division of Professional-Technical Education. Funding is based on the average daily attendance (ADA) of students enrolled in the professional-technical school.

### **105. PROFESSIONAL-TECHNICAL SCHOOL AVERAGE DAILY ATTENDANCE.**

The Division of Professional-Technical Education shall use the enrollment reports sent to the State Department of Education to calculate professional-technical school average daily attendance (ADA) in accordance with applicable laws and rules (Section 33-1002, Idaho Code). Students in attendance at a qualifying professional-technical school shall be reported as aggregate hours and/or aggregate attendance. The aggregate hours and aggregate attendance will be combined to calculate the ADA for the professional-technical school.

**01. Aggregate Hours.** The daily hours of all students who attend less than two and one-half (2.5) hours per day shall be added together and reported as weekly aggregate hours.

**02. Aggregate Attendance.** Students attending more than two and one-half (2.5) hours per day are to be reported as aggregate attendance.

### **106. PROFESSIONAL-TECHNICAL SCHOOL ADDED COST UNIT CALCULATION.**

The Division of Professional-Technical Education shall use the professional-technical school average daily attendance (ADA) as the basis for added cost unit funding.

**01. State Support Unit Value.** The added cost support unit value shall be based on state salary-based apportionment, state paid employee benefits (less state unemployment), base support, and safe environment distribution factors found in the Public School Support Program.

**02. Support Unit Divisor.** Added cost support units for professional-technical schools shall be calculated by using the secondary support unit attendance divisor of eighteen and one-half (18.5) as shown in Section 33-1002(6), Idaho Code.

**03. Added Cost Support Factor.** The added cost support factor for professional-technical schools shall be calculated by multiplying point thirty-three (.33) times the added cost support units generated in the professional-technical school.

**04. Estimated Reimbursement.** The estimated reimbursement shall be calculated by multiplying the state support unit value by the added cost support factor.

### **107. PROFESSIONAL-TECHNICAL SCHOOL ADDED COST UNIT FUND DISTRIBUTION.**

Once the professional-technical appropriation is made, the per unit value will be determined by dividing the total units into the appropriation.

**01. Payment Distribution.** Added cost support unit funds shall be distributed by the Division of Professional-Technical Education in two (2) payments:

a. Seventy percent (70%) of the total estimated funds for which a professional-technical school is eligible shall be distributed each year following receipt of first-period enrollment data from the Department of Education.

b. Based on actual support units generated during the year, the balance shall be distributed each year by July fifteen (15).

**02. Reduced Funding.** In the event that the legislature does not appropriate enough funds to cover at least ninety percent (90%) of the calculated per unit value, preference will be given to existing schools and funding will not be reduced to less than ninety percent (90%) of the previous year's level.

**03. Adjusted Distribution.** In the event that program growth exceeds the amount of the requested appropriation on a given year, the distribution of funds to each professional-technical school will be based on the projected ADA from the Annual Application or the actual ADA from the enrollment reports, whichever is smallest.

#### **108. ACCOUNTABILITY.**

**01. Assessment Process.** The Division of Professional-Technical Education shall develop an assessment process that includes measures and standards for professional-technical school programs.

**02. Administrator Responsibility.** The administrator of each professional-technical school shall be responsible to provide a complete report for each program on the measures and standards at the end of each fiscal year.

**03. Accreditation.** Each professional-technical school shall be accredited following Department of Education guidelines. This accreditation shall be appropriate for the individual type of professional-technical school that is developed.

**04. School Improvement Plan.** The administration, faculty and staff at each professional-technical school shall be responsible to develop and implement a local school improvement plan based on the assessment process.

#### **109. -- 999. (RESERVED).**

## OFFER TIME FOR PUBLIC TESTIMONY: No

Rule Number	Agency/Contact	VOCATIONAL REHABILITATION	Proposed Rule Approval
47.01.01 47.01.02 47.01.03	IDVR Thompson	Refinement of existing rules that includes clarification of where the IDVR Field Services information is referenced, modifications to the client appeals mediation process, and updates and clarifications resulting from 1998 amendments to the federal Rehabilitation Act of 1973.	August 2000

## PENDING RULE TEXT – VOCATIONAL REHABILITATION

47.01.01

**000. LEGAL AUTHORITY.**

Section 33-2301, Idaho Code and ~~the 1998 Amendments of~~ the Rehabilitation Act of 1973 and all subsequent Amendments. (4-5-00)(11-1-00)T

(BREAK IN CONTINUITY OF SECTIONS)

**004. INCORPORATION BY REFERENCE.**

**01. General.** Unless provided otherwise, any reference in these rules to any document identified in Subsection 004 shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term “documents” includes codes, standards or rules which have been adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (11-1-00)T

**02. Availability Of Reference Material.** Copies of the documents incorporated by reference into these rules are available at the following locations: (11-1-00)T

- a. Central Office, Idaho Division of Vocational Rehabilitation, 650 W. State Street, Room 150, Boise, Idaho 83720, (208) 334-3390. (11-1-00)T
- b. Regional Offices, Idaho Division of Vocational Rehabilitation, located at: (11-1-00)T
  - i. 1010 Ironwood Drive, Suite 101, Coeur d’Alene, Idaho 83814, (208) 769-1441. (11-1-00)T
  - ii. 1118 F. Street, P.O. Box 1368, Lewiston, Idaho 83501, (208) 799-5070. (11-1-00)T
  - iii. 3350 Americana Terrace, Suite 210, Boise, Idaho 83706, (208) 334-3560. (11-1-00)T
  - iv. 10200 W. Emerald Street, Suite 101, Boise, Idaho 83704, (208) 327-7411. (11-1-00)T
  - v. 245 3rd Avenue North, Twin Falls, Idaho 83301, (208) 736-2156. (11-1-00)T
  - vi. 1070 Hiline, Suite 200, Pocatello, Idaho 83201, (208) 236-6333. (11-1-00)T
  - vii. 1825 Hoopes Avenue, Idaho Falls, Idaho 83404, (208) 525-7149. (11-1-00)T
  - viii. 3110 Cleveland Blvd. #A5, Caldwell, Idaho 83605, (208) 454-7606. (11-1-00)T
  - ix. This document is also available at website <http://www.state.id.us/idvr/idvrhome.htm>. (11-1-00)T

**03. Documents Incorporated By Reference.** The following documents are incorporated by reference into these rules: (11-1-00)T

- a. All federal publications through the Rehabilitation Services Administration: (11-1-00)T
- b. Idaho Division of Vocational Rehabilitation Field Services Manual, 2000. (11-1-00)T
- c. State Plan for Vocational Rehabilitation 2001-2003. (11-1-00)T
- d. Public Law 105-220. (11-1-00)T
- e. Federal Register, Department of Education, 34 CFR Part 361. (11-1-00)T
- f. The Rehabilitation Act, as amended 1998. (11-1-00)T

**0045. -- 009. (RESERVED).****010. DEFINITIONS.**

**01. CFR.** Code of Federal Regulations. (7-1-93)

**02. Client.** Any individual who has applied for or is eligible for Vocational Rehabilitation services.

~~(4-5-00)(11-1-00)T~~

**03. Designated State Unit.** The Idaho Division of Vocational Rehabilitation. (7-1-93)

**04. IDVR.** The Idaho Division of Vocational Rehabilitation. (4-5-00)

**05. IPE.** Individualized Plan for Employment. (4-5-00)

**06. Method Of Written Notification.** The written notification of findings and conclusions arising from an Administrative Review, Mediation, Fair Hearing, ~~or as a result of the designated person review of the Fair Hearing~~ shall be served to the client via the U.S. Postal Service by means of certified mail. Durational requirements for appeals shall commence on the day received by the client as noted by the certified mail records. ~~(4-5-00)(11-1-00)T~~

**07. P.L.** Public Law. (7-1-93)

**08. RCR.** Running Case Record. (7-1-93)

**09. RSA.** Rehabilitation Services Administration. (7-1-93)

**10. State Administrator.** The Chief Executive Officer of the Idaho Division of Vocational Rehabilitation. (4-5-00)

**11. Impartial Hearing Officer.** A due process hearing shall be conducted by an impartial hearing officer who shall issue a decision based on the provisions of the approved State Plan, the Rehabilitation Act, and State regulations and policies. The Designated State Unit shall maintain a list of qualified impartial hearing officers who are knowledgeable in laws (including regulations) relating to the provision of vocational rehabilitation services. (4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

#### **100.CLIENT APPEALS.**

**01. Client Of Vocational Rehabilitation - Internal Appeals Procedure To Contest A Disputed Action, Failure To Act, Or Decision Of The Division.** A client of Vocational Rehabilitation services may file a request for an Administrative Review, Mediation or Fair Hearing ~~and for~~ a re-determination of any and all actions, or lack thereof, concerning determination of eligibility or the provision (or lack thereof) of services. ~~(4-5-00)(11-1-00)T~~

**02. Administrative Review.** Within ~~thirty ten~~ (310) calendar days of notification of the contested action, lack of action or decision, the client may request that an Administrative Review be held. The request shall be made in writing to the Regional Manager ~~who has direct supervisory authority over the involved Vocational Rehabilitation Counselor handling the client's case with the Division.~~ The written request should state the reason for the requested review. ~~(4-5-00)(11-1-00)T~~

a. The Regional Manager shall inform the client in writing as to the time, place, and date of the Administrative Review. The client may choose to represent himself/herself or may have a representative(s) speak on his/her behalf. The Regional Manager will insure complete familiarity of the case and will call for testimony from any and all parties to the case that he/she feels is relevant to the review. (4-5-00)

b. The Regional Manager will make a decision regarding the specifics of the Administrative Review. This decision will be in written form and it will be sent to the client. It will also be included in the pertinent case file. Since the Administrative Review is an informal problem resolution process, the form of the written decision may be in standard business letter format. (4-5-00)

**03. Mediation.** The client will be informed of the availability of mediation and the process for such to settle disputes. Mediation is voluntary and is not intended to replace a request for a fair hearing. The request shall be made in writing to the Regional Manager. A written request should state the reason for the requested review. ~~(4-5-00)(11-1-00)T~~

a. The division will make available a list of qualified mediators from which the client may choose. (4-5-00)

b. ~~The division will be responsible for any costs associated with the mediation process.~~ The cost of the mediation process is paid for by the Idaho Division of Vocational Rehabilitation. The division is not required to pay for any costs related to the representation of the client. ~~(4-5-00)(11-1-00)T~~

c. ~~Reference:~~ The Mediation must take place within the forty-five (45) day requirement for a Fair Hearing. ~~(4-5-00)(11-1-00)T~~

~~i. 34 CFR Part 361 et al. (4-5-00)~~

~~ii. P.L. 105-220. (4-5-00)~~

~~iii. State Plans for Vocational Rehabilitation. (4-5-00)~~

~~iv. Section 33-2301, Idaho Code. (4-5-00)~~

**04. Fair Hearing.** A Fair Hearing can be held without an Administrative Review or Mediation or if the client is dissatisfied with the result of the Administrative Review or Mediation, he/she may ask for a Fair Hearing. The Administrative Review or Mediation process may not be used as a means to delay a more formal hearing before an impartial ~~H~~hearing Officer unless the parties jointly agree to a delay. The Fair Hearing will deal with the issues involved in the original Administrative Review or Mediation, if one took place. The request for a Fair Hearing will be made in writing to the Administrator of the Division. It must be made within ~~thirty ten~~ (310) calendar days subsequent to receipt of official notification of the Regional Manager's decision from the Administrative Review or the Mediation Agreement from Mediation. ~~A fair hearing can be held without an Administrative Review but must occur within thirty (30) calendar days from the disputed action, lack of action, or a decision of the Division.~~ The hearing by an impartial ~~H~~hearing Officer must be held within forty-five (45) days of a request by the client unless both parties agree to a specified delay. ~~(4-5-00)(11-1-00)T~~

~~a. An Impartial Hearing Officer will be selected to hear a particular case, on the following basis:~~  
~~(4-5-00)~~

~~i. By agreement between the administrator and the individual with a disability; (4-5-00)~~  
~~ii. In an appropriate case the administrator and the individuals representative; (4-5-00)~~

~~iii.~~ a. The Impartial ~~H~~hearing Officer shall be selected from a pool of qualified persons identified jointly by the Division and members of the State Rehabilitation Council. The impartial ~~H~~hearing Officer shall inform all relevant parties, in writing, as to the time, date, and place of the ~~F~~air ~~H~~hearing. The client may represent himself/herself or may choose to be represented by any person(s) of his/her choice. ~~(4-5-00)(11-1-00)T~~

b. The hearing is a more formal proceeding than the Administrative Review or Mediation. Upon its completion, the Impartial Hearing Officer shall make a decision. This decision shall be rendered into writing and provided to all parties involved in the Fair Hearing. The decision shall be the final ~~internal~~ action, ~~unless the State Administrator of the Division decides to review such decision in whole or in part. Within twenty (20) calendar days of the mailing of the decision to the client (or in appropriate cases, such individual's parent or guardian), a person identified by the division shall notify such individual of the intent to review the decision.~~ ~~(4-5-00)(11-1-00)T~~

~~i. If the designated person(s) decides to review the decision, the client shall be provided an opportunity for the submission of additional evidence and information relevant to a final decision. The designated person(s) may not delegate responsibility to make such final decision to any other officer or employee of the designated state unit. (4-5-00)~~

~~ii. A final decision shall be made in writing by the designated person(s) and shall include a full report of the findings and the grounds for such decision. (4-5-00)~~

~~iii. Upon making a final decision, the designated person(s) shall provide a copy of such decision to all parties involved in the Fair Hearing. (4-5-00)~~

~~c. The designated person(s) may not overturn or modify a decision of an Impartial Hearing Officer or part of such a decision that supports the position of the individual unless the designated person(s) concludes, based on clear and convincing evidence, that the decision of the Impartial Hearing Officer is clearly erroneous on the basis of being contrary to federal or state law, including policy. (4-5-00)~~

## 47.01.02

### 000.LEGAL AUTHORITY.

Section 33-2301, Idaho Code and the ~~1998 Amendments of~~ the Rehabilitation Act of 1973 and all subsequent Amendments. ~~(4-5-00)(11-1-00)T~~

### 004. ~~009. (RESERVED)~~ INCORPORATION BY REFERENCE.

**01. General.** Unless provided otherwise, any reference in these rules to any document identified in Subsection 004 shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term "documents" includes codes, standards or rules which have been adopted by an agency of the state or of the United States or by any nationally recognized organization or association. ~~(11-1-00)T~~

**02. Availability Of Reference Material.** Copies of the documents incorporated by reference into these rules are available at the following locations: ~~(11-1-00)T~~

- a. Central Office, Idaho Division of Vocational Rehabilitation, 650 W. State Street, Room 150, Boise, Idaho 83720, (208) 334-3390. (11-1-00)T
- b. Regional Offices, Idaho Division of Vocational Rehabilitation, located at: (11-1-00)T
  - i. 1010 Ironwood Drive, Suite 101, Coeur d'Alene, Idaho 83814, (208) 769-1441. (11-1-00)T
  - ii. 1118 F. Street, P.O. Box 1368, Lewiston, Idaho 83501, (208) 799-5070. (11-1-00)T
  - iii. 3350 Americana Terrace, Suite 210, Boise, Idaho 83706, (208) 334-3560. (11-1-00)T
  - iv. 10200 W. Emerald Street, Suite 101, Boise, Idaho 83704, (208) 327-7411. (11-1-00)T
  - v. 245 3rd Avenue North, Twin Falls, Idaho 83301, (208) 736-2156. (11-1-00)T
  - vi. 1070 Hilina, Suite 200, Pocatello, Idaho 83201, (208) 236-6333. (11-1-00)T
  - vii. 1825 Hoopes Avenue, Idaho Falls, Idaho 83404, (208) 525-7149. (11-1-00)T
  - viii. 3110 Cleveland Blvd. #A5, Caldwell, Idaho 83605, (208) 454-7606. (11-1-00)T
  - ix. This document is also available at website <http://www.state.id.us/idvr/dvrhome.htm>. (11-1-00)T

**03. Documents Incorporated By Reference.** The following documents are incorporated by reference into these rules (11-1-00)T

- a. All federal publications through the Rehabilitation Services Administration: (11-1-00)T
- b. Idaho Division of Vocational Rehabilitation Field Services Manual, 2000. (11-1-00)T
- c. State Plan for Vocational Rehabilitation 2001-2003. (11-1-00)T
- d. Public Law 105-220. (11-1-00)T
- e. Federal Register, Department of Education, 34 CFR Part 361. (11-1-00)T
- f. The Rehabilitation Act, as amended 1998. (11-1-00)T

## **005 -- 009. (RESERVED).**

## **010. DEFINITIONS.**

**01. Authorization To Purchase.** ~~An authorization to purchase is a~~ purchase order issued on behalf of the Division (IDVR Form R-37). ~~(4-5-00)~~(11-1-00)T

**02. Client.** Any individual who has applied for or who is eligible for Vocational Rehabilitation services. ~~(4-5-00)~~(11-1-00)T

**03. Core Vocational Rehabilitation Services.** Services that reduce the impact of functional limitations on the ability to achieve an employment outcome (i.e. medical restoration services, training services, assistive technology, job placement, etc.). (2-1-95)

**04. ~~Division,~~ Designated State Unit.** The Idaho Division of Vocational Rehabilitation ~~(or where it is self evident, officers, employees, or agents of the same).~~ (2-1-95)(11-1-00)T

**05. Extended Period Of Time.** An anticipated six (6) or more months within which time rehabilitation services are being provided on an active and ongoing basis. (2-1-95)

~~06. HEW. Health, Education and Welfare. (2-1-95)~~(11-1-00)T

~~07. FNA. Individualized~~ Financial Needs Assessment. ~~(2-1-95)~~(11-1-00)T

**07. IPE.** Individualized Plan for Employment. (11-1-00)T

**08. MSD. Most Significantly Disabled Disability.** ~~An individual who m~~Meets the criteria ~~of~~ significantly disabled disability and is further defined as: ~~(4-5-00)~~(11-1-00)T

a. Having a severe physical, mental, cognitive or sensory impairment which seriously limits two (2) or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance or work skills) in terms of an employment outcome; and (2-1-95)

b. Whose vocational rehabilitation can be expected to require multiple core vocational rehabilitation services (as opposed to supportive services) over an extended period of time. (2-1-95)

**09. OJT.** On-the-job training. (2-1-95)

~~10. PA. Public Assistance. (2-1-95)~~

~~11. Representative.~~ The client's parent, legal guardian, spouse, legal representative, or an individual who has the Power of Attorney to represent the client in legal situations or another person designated by the individual. (4-5-00)

~~12. RSA-PI. Rehabilitation Services Administration Program Instruction. (2-1-95)~~

~~13. RSA-PQ. Rehabilitation Services Administration Policy Question. (2-1-95)~~

**14. SD. Significantly Disabled Disability.** ~~For purposes of this rule, the~~ definition of significantly disabled disability is found ~~at Public Law 105-220 Sec. 7 (6)(21)(A) (i) through (iii) in the Rehabilitation Act of 1973 as Amended. (4-5-00)~~(11-1-00)T

**15. SSDI.** Social Security Disability Insurance. (2-1-95)

**16. SSI.** Supplemental Security Income. (2-1-95)



**174.Supportive Services.** Services that compliment the provision of core services and are provided only to insure that the client can benefit. (4-5-00)

**185.VRC.** Vocational Rehabilitation Counselor. (2-1-95)

(BREAK IN CONTINUITY OF SECTIONS)

## **100.RECORD KEEPING.**

**01. Confidentiality Of Client Records.** All personal information (regarding individuals who apply for, are a client of, or who are past clients of the Division) which is given to the Division or its agents in the course of the administration of the Vocational Rehabilitation program is confidential. The use of such information and records will be limited to purposes directly connected with the administration of the Vocational Rehabilitation program and may not be disclosed directly or indirectly unless the informed consent of the individual is obtained through a signed release. Exceptions to this general rule are noted ~~below and relate to the proper and legal administration of the Vocational Rehabilitation program as required by P.L. 105 220, the CFR, and relevant Idaho law. These policies and procedures prevail over less stringent state laws~~ in the Rehabilitation Act of 1973 as Amended. (4-5-00)(11-1-00)T

~~**02. Policies For Storage And Release Of Confidential Client Information.** (7 1 93)~~

~~a. Confidential client information shall be stored in such a manner so that it is not casually available for public scrutiny during official work hours of the Division. It shall be stored under lock and key when not being directly used or during non working hours. (7 1 93)~~

~~b. All clients, and their representatives, service providers, cooperating agencies, and interested persons shall be informed of the confidential nature of said information and of the conditions for accessing and releasing this information. (4 5 00)~~

~~c. The client will be informed as to the principle purposes for which the state unit intends to use the information. (4 5 00)~~

~~d. The client shall be informed as to the voluntary or mandatory nature of this information gathering request(s) and the effects of not providing requested information to the state unit. (4 5 00)~~

~~e. In those instances where the client information will be routinely released without their consent, the state unit will so inform the client. (See at "Exceptions to Release of Information Requirements"). (4 5 00)~~

~~f. Persons who are unable to communicate in English or who use special modes of communication will be provided explanations about the state unit policies and procedures in a manner which can be adequately understood by them. (7 1 93)~~

~~g. Release of Information: To the client: the request must be made in writing by the individual or his representative. The state unit will release all requested information which is in the client's case file upon receipt of written request (see exceptions). Medical, psychological, or other information which the state unit believes may be harmful to the individual will not be released directly to the individual, but can be provided through his representative, a physician, or a licensed or certified psychologist. In this case, the state unit may release the medical or psychological information only after receiving assurance from the receiving organization, agency, or individual that the material will be used only for the purpose covered by the written request and that it will not be further released to the involved client. (4 5 00)~~

~~**03. Exceptions To Release Of Information Requirements.** Prior written approval will not be required for release of personal data under the following circumstances: (7 1 93)~~

~~a. Release for legal audit, evaluation, and research efforts. The data may be released only for purposes directly connected with the administration of the Vocational Rehabilitation program, or for purposes that would significantly improve the quality of life for people with disabilities, and only if the organization, agency, or individual assures that: (7 1 94)~~

~~i. The information be used only for the purposes for which it was provided; (7 1 93)~~

~~ii. The information will be released only to persons officially connected with the audit, evaluation, or research; (7 1 93)~~

~~iii. Confidentiality will be safeguarded; and (7 1 93)~~

~~iv. The final product will not reveal any personal identifying information without the written consent of the client or his representative. (4 5 00)~~

~~b. Release required by Law: (7 1 93)~~

~~i. Under court subpoena or judicial order; (7 1 93)~~

~~ii. In response to investigations in connection with law enforcement, fraud, or abuse (except where expressly prohibited by Federal or State law); and (7 1 93)~~

- ~~iii. In order to protect the individual or others when the individual poses a threat to his safety or the safety of others. (4-5-00)~~
- ~~c. Information that may not be released. (7-1-93)~~
  - ~~i. Information requested by verbal, telephonic, or personal request regardless of the source of the request, i.e., client, law enforcement, and credit agencies. All releases (with exceptions noted previously) must be cleared by receipt of a written authority by the client or his representative; (4-5-00)~~
  - ~~ii. Information received from the Social Security Administration or the state's Disability Determinations Service for any purposes other than rehabilitation of the individual; (7-1-93)~~
  - ~~iii. Third party information. The requesting party will be referred to the primary source; (7-1-93)~~
  - ~~iv. Information received from the Veterans Administration that is marked or otherwise designated as confidential. The requesting party shall be referred to the Veterans Administration; and (7-1-93)~~
  - ~~v. Client shall never be allowed to act as couriers of confidential information about themselves to other agencies, organizations, or individuals. (4-5-00)~~
- ~~d. Retention and Destruction of Personal Data on Division Clients. All data not stored in the client case file shall be maintained under lock and key. Discarded notes, carbons, mimeograph or ditto materials which may have personal identifying client data on them shall be destroyed by shredding or burning or otherwise disposed of appropriately to insure confidentiality. Official records will be maintained in a secure fashion for as long as required by State and Federal law after closure. Ultimate destruction shall be by a process guaranteed to protect the confidentiality of the materials being destroyed. The state unit may establish such reasonable fees as necessary to cover the extraordinary cost of duplicating records or making extensive searches. Such fee shall be established under the Administrative Procedures Act. (4-5-00)~~
- ~~e. References: (4-5-00)~~
  - ~~i. P.L. 105-220. (4-5-00)~~
  - ~~ii. 34 CFR Part 361 et al. (4-5-00)~~
  - ~~iii. State Plans for Vocational Rehabilitation. (4-5-00)~~
  - ~~iv. Section 33-2301, Idaho Code. (4-5-00)~~

(BREAK IN CONTINUITY OF SECTIONS)

## 200.ORDER OF SELECTION.

**01. Order Of Selection.** The following order of selection will be used if the Idaho Division of Vocational Rehabilitation finds that it cannot serve all eligible clients due to a lack of either personnel and/or financial resources. The priority listings progress downward with priority number one (1) being the most restrictive and priority number ~~five~~ four (~~54~~) being the least restrictive. ~~(4-5-00)(11-1-00)T~~

- a. Priority #1: At the time that a decision to move to an order of selection is made, it is determined that only those consumers who already have an existing individualized plan for employment (IPE) will continue to be served. (4-5-00)
- b. Priority #2: At the time that a decision to move to an order of selection is made, it is determined that only those consumers in Priority Number 1 above and current and future, otherwise eligible, clients rated to this or a more restrictive priority can be served. Consumers meeting this priority rating are those individuals ~~who are defined as~~ with-most significantly disabled disabilities. ~~(4-5-00)(11-1-00)T~~
- c. Priority #3: At the time that a decision to move to an order of selection is made, it is determined that only those consumers in Priorities Numbers 1 and 2 above and current and future, otherwise eligible, clients rated to this or a more restrictive priority can be served. Consumers meeting this priority rating are those individuals ~~who are defined as~~ with significantly disabled disabilities. ~~(4-5-00)(11-1-00)T~~
- d. Priority #4: All eligible clients for Vocational Rehabilitation services (no order of selection in place). (4-5-00)
- ~~e. Reference: (4-5-00)~~
  - ~~i. P.L. 105-220, Section 100(a)(5)(A) through (D). (4-5-00)~~
  - ~~ii. 34 CFR Part 361 et al. (4-5-00)~~
  - ~~iii. State Plan for Vocational Rehabilitation. (4-5-00)~~
  - ~~iv. RSA PQ 273.(4-5-00)~~
  - ~~v. RSA PI 83-3, January 26, 1983. (4-5-00)~~

(BREAK IN CONTINUITY OF SECTIONS)

### 300.CLIENT SERVICES.

#### 01. Provision Of Purchased Services Contingent Upon Financial Need Of The Recipient. (7-1-93)

a. ~~There is no Federal requirement that the financial need of a person with a disability be considered in the provision of any vocational rehabilitation services. It is allowed at state discretion.~~ The Idaho Division of Vocational Rehabilitation will apply a Financial Needs Assessment ~~in all cases where projected services are expected to be purchased by the Division with some exceptions.~~ Financial need will not be a consideration in the determination of eligibility for Vocational Rehabilitation, but ~~only~~ will be a consideration in allocating the cost of ~~specific~~ VR services, with some exceptions. ~~In all cases the client of Vocational Rehabilitation shall be encouraged to expend their own funds on planned services if they choose to do so even in those cases where there is no law, or rule, requiring that they do so.~~ (4-5-00)(11-1-00)T

02. **Authorization To Purchase.** The Division requires that when purchasing services from a vendor, an authorization must be issued prior to, or ~~in concert with~~ on, the beginning date of service. If services are provided without a Division approved authorization to purchase, the Division reserves the right to not honor the vendor's invoice. (4-5-00)(11-1-00)T

~~a. Reference: (4-5-00)~~

~~i. 34 CFR Part 361 et al. (4-5-00)~~

~~ii. P.L. 105-220. (4-5-00)~~

~~iii. State Plans for Vocational Rehabilitation. (4-5-00)~~

~~iv. Section 33-2301, Idaho Code. (4-5-00)~~

03. **Provisions.** Computation of budget limits is by family size for allowable monthly cost of housing, utilities, food and miscellaneous. (11-1-00)T

(BREAK IN CONTINUITY OF SECTIONS)

### 500.SERVICES FOR WHICH IDAHO DIVISION OF VOCATIONAL REHABILITATION FINANCIAL PARTICIPATION WILL NOT BE AVAILABLE.

01. **General Provisions.** ~~The client will not be eligible for financial participation through the Division of Vocational Rehabilitation for any diagnostic, evaluation, or remedial service that does not clearly, directly or indirectly,~~ Idaho Division of Vocational Rehabilitation will not pay for any services that do not contribute to the determination of eligibility or to employment achieve an employment outcome. (4-5-00)(11-1-00)T

02. **Private Pilot's License.** The Division of Vocational Rehabilitation will not financially participate in the securing of a private pilot's license ~~for an otherwise eligible recipient.~~ The Division may, ~~subject to constraints imposed by sound career counseling and its Financial Needs Assessment financially~~ assist an otherwise eligible recipient in securing a Commercial Pilot's License. (7-1-93)(11-1-00)T

03. **Graduate Or Advanced Degree.** ~~It is the policy of the state unit that financial assistance to secure an Advanced or Graduate Degree for an otherwise eligible recipient will not be available. The sole exception to this rule is when it can be conclusively demonstrated that the only possible way to re-enter employment is through the securing of this Advanced or Graduate Degree, and that barriers to achieving the Advanced Degree rest solely upon barriers created by the recipient's disability(ies).~~ The Idaho Division of Vocational Rehabilitation may assist with an advanced degree if it is the only means available for an individual with a significant disability to achieve an employment outcome. (7-1-94)(11-1-00)T

04. **Vehicular Purchase.** ~~State unit~~ Financial assistance will not be available for the purchase of a vehicle for the private use of an otherwise eligible recipient. For the purpose of this rule, "vehicle" is defined as any conveyance that must be licensed by the state of Idaho in order to be operated on state highways, roads, streets, and waterways. (Included within this definition are: cars, trucks, vans, motorcycles, and boats of various sizes and description). ~~Nothing in this rule should be construed as ruling out the possible use of Division funds to enable the otherwise eligible recipient may be utilized~~ to render an already owned vehicle accessible for their use (i.e., hand controls, van conversions, and installation of lifts.). However, such add-on equipment which does not become an integral part of the vehicle shall remain under the ownership of the state unit until such time as the state unit determines that it is prudent to release its interest. (7-1-93)(11-1-00)T

05. **Medical Restoration.** Financial participation will not be available for a surgery if it is the sole service needed for a client to ~~return to~~ achieve an employment outcome. Surgery may be provided if it is part of a comprehensive VR plan for employment and if it is needed to alleviate a problem diagnosed during the provision of VR services under an IPE. (4-5-00)(11-1-00)T

**06. Organ Transplantation.** ~~With the exception of Renal Transplantation as authorized by Sections 33-2307 and 33-2308, Idaho Code, all other forms of transplantation shall be reviewed as it relates to Subsection 500.05. The Idaho Division of Vocational Rehabilitation will not pay for organ transplantation with the exception of Renal Transplantation. (4-5-00)(11-1-00)T~~

**07. Services To Non-Residents Of The State.** Financial participation will not be available to non-residents of Idaho. ~~However, with the exception of the Renal Disease Program, no durational requirements will be placed upon individuals who move into the state. Citizenship is not a requisite for financial assistance; however, the individual must have legal resident status (i.e., illegal aliens will not be eligible for the Vocational Rehabilitation programs or for the Renal Disease Program). To be eligible for and receive financial assistance under the state's End Stage Renal Disease Program, applying individuals must live within the state for twelve (12) consecutive months, or be on record as having been a permanent resident of the state and their reason for current external residency is a function of military obligation or temporary business assignments, or they, their spouse, parent or guardian must show proof of employment or an offer thereof in the state prior to moving to the state. (7-1-94)(11-1-00)T~~

(BREAK IN CONTINUITY OF SECTIONS)

#### **600.POLICY ON PROVISION OF CRP (COMMUNITY REHABILITATION PROGRAM) SERVICES.**

~~Purchase of Work Evaluation, Work Adjustment, Community Based Job Placement and Community Based Work Evaluation, Community Based Work Adjustment, Job Site Development, Job Coaching, and Placement and Follow-Along Services, are services the Idaho Division of Vocational Rehabilitation purchases from CRPs which are accredited by CARF (Commission on Accreditation of Rehabilitation Facilities) or RSAS (Rehabilitation Services Accreditation System. (7-1-93)(11-1-00)T~~

~~— **01. General Provisions.** The Idaho Division of Vocational Rehabilitation will purchase services only from duly certified, licensed, or accredited firms, businesses, community rehabilitation programs, or individuals. The definition of services will be those established by CARF or RSAS. Community rehabilitation programs, businesses or firms wishing to sell the services to the Division must show appropriate certification, accreditation, or licensure. Those community rehabilitation programs, businesses holding CARF or RSAS, (or comparable) accreditation will receive priority recognition. (4-5-00)~~

### **47.01.03**

#### **100.RATES OF PAYMENT.**

**01. Authorization To Purchase.** ~~Authorization to purchase services IDAPA 47.01.02, "Field Services," Section 300, Client Services. The Vocational Rehabilitation staff will negotiate rates of payment in the best interest of the organization. We will always encourage the pursuit of comparable benefits. (4-5-00)(11-1-00)T~~

**02. Policy.** It is the policy of the Division to pay the "usual and customary" charges for services provided to itself or to its clients by providers of goods or services. The only exception to the "usual and customary" considerations is listed in the fee chapter of the ~~Divisions Manual of Operations~~ Idaho Division of Vocational Rehabilitation Field Services Manual, 2000 or addressed as a result of state purchasing rules or superseding Idaho Statute. Exceptions may be required for geographical considerations. ~~(4-5-00)(11-1-00)T~~

**03. Private Public In-State Colleges, Vocational Technical Schools, And Universities, And Other Education And Training Institutions.** Maximum educational expenses (fees and tuition charges) will be based upon the current maximum cost set for resident students by the Idaho State Board of Education for the colleges and universities under their jurisdiction. ~~The exception is if the course of study is not available at the public institution.~~ A book and supply allowance may be provided. ~~(4-5-00)(11-1-00)T~~

**04. Private In-State Colleges, Vocational Technical Schools, Universities, And Other Education And Training Institutions.** Maximum educational expenses (fees and tuition charges) will be based upon the current maximum cost set for resident students by the Idaho State Board of Education for the colleges and universities under their jurisdiction. The exception is if the course of study is not available at the public institution. A book and supply allowance may be provided. ~~(11-1-00)T~~

**045. Out-Of-State Colleges, And Universities, Vocational Technical Schools And Other Education And Training Institutions.** ~~Maximum educational expenses (fees and tuition charges) will be based upon the maximum current cost set for resident students by the Idaho State Board of Education for the colleges and universities under~~

~~their jurisdiction. A book and supply allowance may be provided. An exception to this maximum will exist when the student must attend an out-of-state college or university or other education and training institute if the course of study he is involved in is not offered within the State of Idaho. (4-5-00)(11-1-00)T~~

a. If the VR client must attend an out-of-state institution because the course of study is not offered within the state of Idaho, then VR can pay the "usual and customary" charges for fees and tuition. (11-1-00)T

b. If the course of study is available in the state of Idaho, but the client chooses to attend an out-of-state institution, then VR will only pay the public in-state maximum cost (fees and tuition charges) set by the Idaho State Board of Education. (11-1-00)T

c. A book and supply allowance may be provided. (11-1-00)T

**056. Medical Exams And Written Report. (7-1-93)**

a. Specialist Exams (those addressing a specialty area and provided by an M.D. ~~or licensed psychologist~~)—~~One~~One hundred fifty dollars (\$150) maximum plus actual cost of related procedures (e.g., x-rays). (7-1-93)(11-1-00)T

b. Psychological Exams by a Licensed Psychologist. One hundred fifty dollars (\$150) maximum plus the actual cost of tests conducted. (4-5-00)(11-1-00)T

c. ~~Ophthalmologist/Optomestrist—Table. The following allowable costs will be the maximums for general visual exam and accompanying test for ophthalmologist/optometrist. The maximum also includes frames and glasses. Tinted glasses require a prescription for IDVR payment. The allowable cost for the ophthalmologist will be authorized when diseases of the eye are prevalent and cannot be dealt with by an optometrist. Optometrist – Visual Exam. Eighty-five dollars (\$85) maximum.~~

ALLOWABLE COSTS FOR SERVICES	
Procedure	Costs
Visual Exam	\$70
Tonometry	\$25
Visual Fields	\$48
Fundus Photos	\$40
Spectacle Frames	\$60
Single Vision Lenses (per pair)	\$60
Bifocals (per pair)	\$85

~~(4-5-00)(11-1-00)T~~

d. Glasses. Frames - sixty dollars (\$60) maximum. Single Vision Lenses - seventy dollars (\$70) per pair. Bifocal Lenses - One hundred dollars (\$100) per pair. (11-1-00)T

~~de.~~ e. Audiologist. ~~Seventy~~ Eighty-five dollars (\$85) maximum. (7-1-98)(11-1-00)T

ef. General Basic Medical. Fifty-five dollars (\$55) maximum. (7-1-93)

~~06. Provisions. Provision of purchased services contingent upon financial need of the recipient; computation of budget limits by family size for allowable monthly cost for utilities, clothing/food, transportation, and entertainment. (4-5-00)~~

~~07. Medicaid Allowable. The Division will only pay the Medicaid rate for kidney related services. (4-5-00)~~

**087. Transportation.** Transportation is ~~not~~ a primary supportive service. ~~It will be considered only to support and to insure the success of diagnostic, evaluation, or rehabilitation services leading to an employment outcome.~~ (4-5-00)(11-1-00)T

a. Public Conveyance - Actual Cost (7-1-93)

b. Private Vehicle - not to exceed maximum ~~ninety~~ sixty dollars (\$960) in-town commuting, or one hundred twenty dollars (\$120) out-of-town commuting per month. (4-5-00)(11-1-00)T

**098. Maintenance.** The maximum allowable monthly maintenance payment will not exceed the monthly maximums allowed for individual SSI payments as established by the Social Security Administration. ~~Maintenance is not a primary service.~~ Maintenance is a supportive service. ~~The cost of maintenance may not exceed the amount of increased expenses that the rehabilitation program causes for the individual or his family. It is not intended to pay for those living costs that exist irrespective of the individual's status as a vocational rehabilitation client. Maintenance~~

~~may be provided~~ Maintenance is for the additional costs incurred by the participant in the VR plan or during diagnosis and evaluation when cost of food and shelter represent ~~out of ordinary or~~ extra cost imposed by ~~reason of~~ the diagnostic or evaluative services. ~~(4-5-00)~~(11-1-00)T

~~109. Copy Fees. The Division will pay a m~~Maximum of fifteen dollars (\$15)~~per incident to agencies, organizations, or individuals providing copies of records to be used for Division purposes. (7-1-93)~~(11-1-00)T

~~110. Community Rehabilitation Program Fees~~ Costs. Negotiated on an annual basis.

~~(4-5-00)~~(11-1-00)T

~~12. Sandimmune. The Idaho Division of Vocational Rehabilitation will not cover the cost of Sandimmune (anti rejection) drug for post transplant clients in the State Kidney program. The Idaho Division of Vocational Rehabilitation in its General State Federal Program will continue the pursuit of comparable benefits.~~

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