

ITEM B.4.a**SUBJECT: FIRST READING - INTELLECTUAL PROPERTY POLICY****BACKGROUND:**

This legislative session, the Board successfully requested that the administrative rules on Intellectual Property be repealed, thus allowing the Board to govern personnel matters by policy rather than rule. The repeal of this rule is effective on July 1, 2001. At the April Board meeting, the Board was presented with proposed changes to the rules before adding provisions into Board policy. The Board opted for further discussion at the May retreat and no action was taken.

DISCUSSION:

The proposed changes being discussed in relation to the intellectual property policy are a significant expansion of what has been previously provided for in rule. Thus, it is anticipated that additional discussion is needed, and in fact is planned for at the May retreat. However, the rules currently in place are due to expire on July 1, 2001. It is highly unlikely that the new revisions will make it through two Board readings before this July 1 cut-off date. In order for at least the status quo to be maintained while discussions continue, the Board would need to approve into their policies the existing rule language for first reading at the May retreat. This existing language would come back again for second reading in June, and would thus be in place in Board policy when the rule repeal is effective. Discussions on additional revisions can continue and be acted upon whenever complete.

IMPACT:

Approving this policy will maintain the status quo by moving existing rule language to Board policy, and will allow discussions on further revisions to continue as long as necessary.

FISCAL IMPACT:

None at this time.

BOARD ACTION:

It was moved by _____, seconded by _____, and carried to approve for first reading the SBOE's Intellectual Property Policy as exhibited in Item B.4.a

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A. Intellectual Property

1. 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 the 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 remain open to 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.

2. Intellectual Property

- 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:
 - i.** Arising from any work performed by an employee of the State Board during the course of his duties to the agency or institution;
 - 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
 - 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 institutions or a closely related research foundation.
- 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 the employees or contractors under the following circumstances:
 - i.** When the work is performed outside their assigned duties; and
 - ii.** When the employee/contractor is without benefit of State facilities except those available to members of the general public, such as libraries.

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- 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.
- 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.

3. Copyrights

- 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.
- b.** Except as noted in 3.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.

4. Intellectual Property Transfer

- 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

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allow the institutions to play appropriate roles in knowledge transfer and economic growth and development. Under this rule, the institutions may:

- i.** Grant rights to owned intellectual properties to research foundations for further development or transfer.
 - ii.** Themselves act as licensors to convey intellectual property rights to commercial ventures.
 - iii.** Grant exclusive rights to a licensee.
 - 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.
 - 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.
- 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:
 - i.** The name of the institutional position (or office) with the authority and responsibility for carrying out the policy and binding the institution contractually.
 - 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).
 - 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).
- 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, the 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

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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.