

**BUSINESS AFFAIRS AND HUMAN RESOURCES  
OCTOBER 20-21, 2004**

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<b>TAB</b>	<b>DESCRIPTION</b>	<b>ACTION</b>
<b>1</b>	<b>UNIVERSITY OF IDAHO</b> Non-Delegated Appointments Head Coach Employment Agreement Employee Settlement Agreement	Motions to approve
<b>2</b>	<b>OFFICE OF THE STATE BOARD OF EDUCATION</b> Non-Delegated Appointment	Motion to approve
<b>3</b>	<b>POSITION AUTHORIZATION POLICY</b> First Reading -Policy II.B.3 Amendment	Motion to approve

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**INSTITUTION / AGENCY AGENDA**  
**UNIVERSITY OF IDAHO**

**SUBJECT**

A request by the University of Idaho for approval of three positions with a salary equal to/greater than 75% of the Chief Executive base salary and an athletic contract extension

**APPLICABLE STATUTE, RULE, OR POLICY**

State Board of Education Governing Policies and Procedures, Section II.B.3  
State Board of Education Governing Policies and Procedures, Section II.H.

**DISCUSSION**

A request by the University of Idaho for approval of:

- three (3) positions with a salary equal to/greater than 75% of the Chief Executive Officer base salary supported by appropriated funds.
- a contract extension for the Men's Head Basketball Coach supported by appropriated funds.

**IMPACT**

Once approved the changes can be processed on the State Employee Information System.

**STAFF COMMENTS AND RECOMMENDATIONS**

Staff has reviewed the four items and has no comments. The Athletic Committee chair, Mr. Stone, has reviewed the coach contract extension and expressed no concerns.

**BOARD ACTION**

A motion to approve the request by the University of Idaho for three (3) positions with a salary equal to/greater than 75% of the Chief Executive Officer base salary and a contract extension for the Men's Head Basketball Coach.

Moved by \_\_\_\_\_ Seconded by \_\_\_\_\_ Carried Yes \_\_\_\_\_ No \_\_\_\_\_

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**INSTITUTION / AGENCY AGENDA  
UNIVERSITY OF IDAHO - continued**

**SALARY EQUAL TO/GREATER THAN 75% OF CHIEF EXECUTIVE OFFICER BASE  
SALARY**

Demetrios A. Kazakos	Chair
FTE	.923
Term of Appointment	11 months
Effective Date	July 1, 2004
Annual Salary	\$135,340.80
Funding Source	Appropriated funds
Area/Department of Assignment	Electrical and Computer Engineering
Justification	New appointment
 Charles L. Peterson	 Interim Dean
FTE	1.0
Term of Appointment	December 31, 2004 or until position is filled
Effective Date	August 1, 2004
Annual Salary	\$145,017.60
Funding Source	Appropriated funds
Area/Department of Assignment	College of Engineering
Justification	Interim appointment
 John C. Tracy	 Director, Water Resources
FTE	1.0
Term of Appointment	12 months
Effective Date	August 23, 2004
Annual Salary	\$134,992.00
Funding Source	Appropriated funds
Area/Department of Assignment	Water Resources Research Institute
Justification	New appointment

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**INSTITUTION / AGENCY AGENDA  
UNIVERSITY OF IDAHO - continued**

**HEAD COACH OR ATHLETIC DIRECTOR EMPLOYMENT AGREEMENTS**

Leonard Perry	Men's Head Basketball Coach (Exhibit 1)
FTE 1.0	12 months
Term of Appointment	October 25, 2004 - October 24, 2008
Effective	
Annual Salary	\$115,003.20
Funding Source	Appropriated Funds
Area/Department of Assignment	Athletics
Additional Compensation	Standard UI and Athletics Department fringe benefits; \$60,000 per year for media and public appearance; 1/13 of salary if championship and NCAA tournament eligibility is achieved; 1/13 of salary if team is ranked in top 25 in any published national final poll; 1/13 of salary based on the academic achievement and behavior of team; \$5,000 each year the coach is named Conference Coach of the Year.
Justification:	Contract Extension

# EXHIBIT 1a - Summary

1	LEONARD PERRY, HEAD MEN'S BASKETBALL COACH - MULTI-YEAR CONTRACT CHANGES			
2	<b>MODEL CONTRACT SECTION</b>	<b>UNIVERSITY OF IDAHO CONTRACT SECTION 2004</b>	<b>UNIVERSITY OF IDAHO CONTRACT SECTION 2001</b>	<b>JUSTIFICATION FOR MODIFICATION</b>
3	2.1. Term	2.1 Term	2.1 Term	Language changes dates of appointment from September 24, 2001-April 9, 2004 to October 25, 2004-October 24, 2008
4	3.1 Regular Compensation	3.1.1.(d) Regular Compensation	3.1.1.(d) Regular Compensation	Language changes salary from \$100,006.17 to \$115,003.20
5	3.1 Regular Compensation	3.1.1. Regular Compensation; language added	3.1.1. Regular Compensation; language added	Language indicates Coach may be subject to temporary furlough
6	3.2 Supplemental Compensation		3.2.1 Supplemental Compensation; language modified	Language specifies compensation if team is conference champion or co-champion or becomes eligible for the NCAA tournament; deletes reference to post-season National Invitation Tournament
7	3.2 Supplemental Compensation		3.2.2 Supplemental Compensation; language added	Language specifies that each year the team is ranked in the top 25 in any published national poll, supplemental compensation is 1/13 of Coach's salary
8	3.2. Supplemental Compensation		3.2.2 Supplemental Compensation; language added	Language specifies that each year the Coach is named Coach of the Year, Coach will receive \$5,000 supplemental compensation
9	3.2. Supplemental Compensation		3.2.3 Supplemental Compensation; language deleted	Language deletes reference to development of the men's basketball program
10	3.2. Supplemental Compensation		3.2.4 Supplemental Compensation; language modified	Language changes from 1/26 to 1/13 of Coach's salary for academic achievement and behavior of the team
11	3.2. Supplemental Compensation	3.2.5 Supplemental Compensation media; language modified	3.2.4 Supplemental Compensation media; language modified	Language changes the amount to be received from media outlets to \$60,000 from \$50,000; allows for half of the sum to be paid prior to the regular season and half after the season
12	3.2. Supplemental Compensation	3.2.6. Supplemental Compensation summer camps; language modified	3.25. Supplemental Compensation summer camps; language modified	Language changes the amount the Coach will receive from youth basketball camps, less \$500, after all claims, insurance, and expenses are paid
13	5.2 Termination of Coach for Convenience of Univeristy		5.2.2 Terminatin of Coach for Convenience of the University; language deleted	Language eliminates reference to equal installment
14	5.3 Termination of Coach for Convenience		5.3.3 Liquidated Damages; language modified	Language changes dates and amounts for payment of liquidated damages from April 9, 2002 to October 24, 2005 the sum of \$30,000; October 25, 2005-October 24, 2006 the sum of \$25,000; from April 10, 2002-April 9, 2003 to October 25, 2006-October 24, 2007 the sum of \$20,000; from April 10, 2003-April 9, 2004 to October 25, 2007-October 24, 2008 the sum of \$10,000
15	6.2 University Property		6.2 University Property Vehicle; language modified	Language changes program name from University's courtesy car to Vandal Wheels program
16	Signature Page		Signature Page; language modified	Language changes name of president from Robert A. Hoover to Timothy P. White

**EMPLOYMENT AGREEMENT**  
**Changes tracked from contract approved at September 20-21, 2001 Board meeting.**

This Employment Agreement (Agreement) is entered into by and between the University of Idaho (University), and Leonard Perry (Coach).

**ARTICLE 1**

1.1. Employment. Subject to the terms and conditions of this Agreement, the University shall employ Coach as the head coach of its intercollegiate men's basketball team. Coach represents and warrants that Coach is fully qualified to serve, and is available for employment, in this capacity.

1.2. Reporting Relationship. Coach shall report and be responsible directly to the University's Director of Athletics (Director) or the Director's designee. Coach shall abide by the reasonable instructions of Director or the Director's designee and shall confer with the Director or the Director's designee on all administrative and technical matters. Coach shall also be under the general supervision of the University's President (President).

1.3. Duties. Coach shall manage and supervise the Team and shall perform such other duties in the University's athletic program as the Director may assign and as may be described elsewhere in this Agreement. The University shall have the right, at any time, to reassign Coach to duties at the University other than as head coach of the Team, provided that Coach's compensation and benefits shall not be affected by any such reassignment, except that the opportunity to earn supplemental compensation as provided in sections 3.2.1 through 3.2.7 5 shall cease.

**ARTICLE 2**

2.1. Term. This Agreement is for a fixed-term appointment of four (4) years, commencing on October 25, 2004, ~~September 24, 2001~~, and terminating, without further notice to Coach, on October 24, 2008, ~~April 9, 2004~~, unless sooner terminated in accordance with other provisions of this Agreement.

2.2. Extension or Renewal. This Agreement is renewable solely upon an offer from the University and an acceptance by Coach, both of which must be in writing and signed by the parties. Any renewal is subject to the prior approval of University's Board of Regents. This Agreement in no way grants to Coach a claim to tenure in employment, nor shall Coach's service pursuant to this agreement count in any way toward tenure at the University.

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ARTICLE 3

3.1 Regular Compensation.

3.1.1 In consideration of Coach's services and satisfactory performance of this Agreement, the University shall provide to Coach:

- a) An annual salary of \$115,003.20 per year, payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the Director and President and approved by the University's Board of Regents;
- b) The opportunity to receive such employee benefits as the University provides generally to non-faculty exempt employees; and
- c) The opportunity to receive such employee benefits as the University's Department of Athletics (Department) provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

Coach understands and agrees that University is in the process of reviewing and clarifying policies and procedures regarding leave without pay, or temporary furlough, when warranted by financial conditions. If leave without pay or temporary furlough were imposed, Coach's actual salary would be lower than the annual salary set forth in Paragraph 3.1.1 (a) above. In no event would mandatory leave without pay or temporary furlough exceed fifteen (15) days per fiscal year.

3.2 Supplemental Compensation

3.2.1. Each year the Team is the conference champion or co-champion and or becomes eligible for the NCAA tournament pursuant to NCAA Division I guidelines, and if ~~receives an invitation to the post-season tournament of the National Collegiate Athletic Association or the post season National Invitation Tournament,~~ Coach continues to be employed as University's head men's intercollegiate basketball coach as of the ensuing July 1st, the University shall pay to Coach supplemental compensation in an amount equal to one-thirteenth (1/13) of Coach's Annual Salary as it was during the fiscal year in which the championship NCAA tournament eligibility are achieved. ~~in which the invitation was received.~~ The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.2 Each year the Team is ranked in the top 25 in any published national final poll of intercollegiate men's basketball teams and if Coach continues to be employed as University's head men's basketball coach as of the ensuing July 1st, the

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University shall pay Coach supplemental compensation in an amount equal to one-thirteenth (1/13) of Coach's Annual Salary in effect on the date of the final poll. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.3 Each year Coach is named Conference Coach of the Year, and if Coach continues to be employed as University's head men's basketball coach as of the ensuing July 1st, Coach shall receive supplemental compensation of \$5,000. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.4 Each year Coach shall be eligible to receive supplemental compensation in an amount up equal to one-thirteenth (1/13) (1/26) of Coach's Annual Salary based on the academic achievement and behavior of Team members. The determination of whether Coach will receive such supplemental compensation and the timing of the payment(s) shall be at the sole discretion of the President in consultation with the Director. The determination shall be based on the following factors: grade point averages; difficulty of major course of study; honors such as scholarships, designation as Academic All-American, and conference academic recognition; progress toward graduation for all athletes, but particularly those who entered the University as academically at-risk students; the conduct of Team members on the University campus, at authorized University activities, in the community, and elsewhere. Any such supplemental compensation paid to Coach shall be accompanied with a detailed justification for the supplemental compensation based on the factors listed above and such justification shall be separately reported to the Board of Regents as a document available to the public under the Idaho Public Records Act.

~~3.2.3 Each year Coach shall be eligible to receive supplemental compensation in an amount up to One Twenty-sixth (1/26) of Coach's Annual Salary based on the overall development of the intercollegiate men's basketball program; ticket sales; fundraising; outreach by Coach to various constituency groups, including University students, staff, faculty, alumni and boosters; and any other factors the President wishes to consider. The determination of whether Coach will receive such supplemental compensation and the timing of the payment(s) shall be at the sole discretion of the President in consultation with the Director.~~

3.2.5 The Coach shall receive the sum of \$60,000 \$50,000 from the University or the University's designated media outlet(s) or a combination thereof each year during the term of this Agreement in compensation for participation in media programs and public appearances (Programs). Each year, one-half of this sum shall be paid prior to the first regular season men's basketball game, and one-half shall be paid no later than two weeks after the last regular season men's basketball game or post season match, whichever occurs later. Coach's right to receive the second half of such payment shall vest on the date of the Team's last regular season or post-season competition, whichever occurs later, and contingent upon Coach's continued employment as of that date. Coach's right to receive any such media payment under

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this Paragraph is expressly contingent on Coach's compliance with University's financial stewardship policies as set forth in University's Administrative Procedures Manual Chapter 25. ~~Coach's right to receive such a payment shall vest on the date of the Team's last regular season or post season competition, whichever occurs later. This sum shall be paid as follows: (1) For fiscal year 2002—Twenty Five Thousand Dollars (\$25,000.00) on or before September 28, 2001, and Twenty Five Thousand Dollars (\$25,000.00) on or before January 15th, 2002; (2) For fiscal year 2003—Twenty Five Thousand Dollars (\$25,000.00) on or before July 15th, 2002, and Twenty Five Thousand Dollars (\$25,000.00) on or before January 15th, 2003; (3) For fiscal year 2004—Twenty Five Thousand Dollars (\$25,000.00) on or before July 15th, 2003, and Twenty Five Thousand Dollars (\$25,000.00) on or before January 15th, 2004.~~ Agreements requiring the Coach to participate in Programs related to his duties as an employee of University are the property of the University. The University shall have the exclusive right to negotiate and contract with all producers of media productions and all parties desiring public appearances by the Coach. Coach agrees to cooperate with the University in order for the Programs to be successful and agrees to provide his services to and perform on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither Coach nor any assistant coaches shall appear without the prior written approval of the Director on any competing radio or television program (including but not limited to a coach's show, call-in show, or interview show) or a regularly scheduled news segment, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Director, Coach shall not appear in any commercial endorsements which are broadcast on radio or television that conflict with those broadcast on the University's designated media outlets.

3.2.~~65~~ Coach agrees that the University has the exclusive right to operate youth basketball camps on its campus using University facilities. The University shall allow Coach the opportunity to earn supplemental compensation by assisting with the University's camps in Coach's capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the University's youth basketball camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the University's youth basketball camps, the University shall pay Coach the remaining income from the youth basketball camps, less \$500, after all claims, insurance, and expenses of such camps have been paid. ~~In exchange for Coach's participation in the University's summer boys' basketball camps, the University shall pay Coach an amount equal to the net revenue (gross revenue minus deduction of all expenses reasonably attributable to the camps) of the camps as supplemental compensation during each year of his employment as head intercollegiate men's basketball coach at the University. This amount shall be paid on or before October 1st of each year for the preceding summer.~~

3.2.~~76~~ Coach agrees that the University has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff, including Coach, during official practices and games and during times when Coach or

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the Team is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of University. Coach recognizes that the University is negotiating or has entered into an agreement with Adidas to supply the University with athletic footwear, apparel and/or equipment. Coach agrees that, upon the University's reasonable request, Coach will consult with appropriate parties concerning Adidas product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by Adidas, or give a lecture at an event sponsored in whole or in part by Adidas, or make other educationally-related appearances as may be reasonably requested by the University. Notwithstanding the foregoing sentence, Coach shall retain the right to decline such appearances as Coach reasonably determines to conflict with or hinder his duties and obligations as head men's basketball coach. In order to avoid entering into an agreement with a competitor of Adidas, Coach shall submit all outside consulting agreements to the University for review and approval prior to execution. Coach shall also report such outside income to the University in accordance with NCAA rules. Coach further agrees that Coach will not endorse any athletic footwear, apparel and/or equipment products, including Adidas, and will not participate in any messages or promotional appearances which contain a comparative or qualitative description of athletic footwear, apparel or equipment products.

3.3 General Conditions of Compensation. All compensation provided by the University to Coach is subject to deductions and withholdings as required by law or the terms and conditions of any fringe benefit in which Coach participates. However, if any fringe benefit is based in whole or in part upon the compensation provided by the University to Coach, such fringe benefit shall be based only on the compensation provided pursuant to section 3.1.1, except to the extent required by the terms and conditions of a specific fringe benefit program.

**ARTICLE 4**

4.1. Coach's Specific Duties and Responsibilities. In consideration of the compensation specified in this Agreement, Coach, in addition to the obligations set forth elsewhere in this Agreement, shall:

4.1.1. Devote Coach's full time and best efforts to the performance of Coach's duties under this Agreement;

4.1.2. Develop and implement programs and procedures with respect to the evaluation, recruitment, training, and coaching of Team members which enable them to compete successfully and reasonably protect their health, safety, and well-being;

4.1.3. Observe and uphold all academic standards, requirements, and policies of the University and encourage Team members to perform to their highest academic potential and to graduate in a timely manner; and

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4.1.4. Know, recognize, and comply with all applicable laws and the policies, rules and regulations of the University, the University's governing board, the conference, and the NCAA; supervise and take appropriate steps to ensure that Coach's assistant coaches, any other employees for whom Coach is administratively responsible, and the members of the Team know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the Director and to the Department's Director of Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall cooperate fully with the University and Department at all times. The names or titles of employees whom Coach supervises are attached as Exhibit A ~~Exhibit C~~. The applicable laws, policies, rules, and regulations include: (a) State Board of Education and Board of Regents of the University of Idaho Governing Policies and Procedures and Rule Manual; (b) University's Handbook; (c) University's Administrative Procedures Manual; (d) the policies of the Department; (e) NCAA rules and regulations; and (f) the rules and regulations of the men's basketball conference of which the University is a member.

4.2 Outside Activities. Coach shall not undertake any business, professional or personal activities, or pursuits that would prevent Coach from devoting Coach's full time and best efforts to the performance of Coach's duties under this Agreement, that would otherwise detract from those duties in any manner, or that, in the opinion of the University, would reflect adversely upon the University or its athletic program. Subject to the terms and conditions of this Agreement, Coach may, with the prior written approval of the Director, who may consult with the President, enter into separate arrangements for outside activities and endorsements which are consistent with Coach's obligations under this Agreement. Coach may not use the University's name, logos, or trademarks in connection with any such arrangements without the prior written approval of the Director and the President.

4.3 NCAA Rules. In accordance with NCAA rules, Coach shall obtain prior written approval from the University's President for all athletically related income and benefits from sources outside the University and shall report the source and amount of all such income and benefits to the University's President whenever reasonably requested, but in no event less than annually before the close of business on June 30th of each year or the last regular University work day preceding June 30th. The report shall be in a format reasonably satisfactory to University. In no event shall Coach accept or receive directly or indirectly any monies, benefits, or gratuities whatsoever from any person, association, corporation, University booster club, University alumni association, University foundation, or other benefactor, if the acceptance or receipt of the monies, benefits, or gratuities would violate applicable law or the policies, rules, and regulations of the University, the University's governing board, the conference, or the NCAA.

4.4 Hiring Authority. Coach shall have the responsibility and the sole authority to recommend to the Director the hiring and termination of assistant coaches for the Team, but the decision to hire or terminate an assistant coach shall be made by the

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Director and shall, when necessary or appropriate, be subject to the approval of President and the University's Board of Regents.

4.5 Scheduling. Coach shall consult with, and may make recommendations to, the Director or the Director's designee with respect to the scheduling of Team competitions, but the final decision shall be made by the Director or the Director's designee.

4.6 Other Coaching Opportunities. Coach shall not, under any circumstances, interview for, negotiate for, or accept employment as a coach at any other institution of higher education or with any professional sports team, requiring performance of duties prior to the expiration of this Agreement, without the prior approval of the Director. Such approval shall not unreasonably be withheld.

**ARTICLE 5**

5.1 Termination of Coach for Cause. The University may, in its discretion, suspend Coach from some or all of Coach's duties, temporarily or permanently, and with or without pay; reassign Coach to other duties; or terminate this Agreement at any time for good or adequate cause, as those terms are defined in applicable rules and regulations.

5.1.1 In addition to the definitions contained in applicable rules and regulations, University and Coach hereby specifically agree that the following shall constitute good or adequate cause for suspension, reassignment, or termination of this Agreement:

- a) A deliberate or major violation of Coach's duties under this agreement or the refusal or unwillingness of Coach to perform such duties in good faith and to the best of Coach's abilities;
- b) The failure of Coach to remedy any violation of any of the terms of this agreement within 30 days after written notice from the University;
- c) A deliberate or major violation by Coach of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference or the NCAA, including but not limited to any such violation which may have occurred during the employment of Coach at another NCAA or NAIA member institution;
- d) Ten (10) working days' absence of Coach from duty without the University's consent;

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- e) Any conduct of Coach that constitutes moral turpitude or that would, in the University's judgment, reflect adversely on the University or its athletic programs;
- f) The failure of Coach to represent the University and its athletic programs positively in public and private forums;
- g) The failure of Coach to fully and promptly cooperate with the NCAA or the University in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA;
- h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team; or
- i) A violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team if Coach knew or should have known of the violation and could have prevented it by ordinary supervision.

5.1.2 Suspension, reassignment, or termination for good or adequate cause shall be effectuated by the University as follows: before the effective date of the suspension, reassignment, or termination, the Director or his designee shall provide Coach with notice, which notice shall be accomplished in the manner provided for in this Agreement and shall include the reason(s) for the contemplated action. Coach shall then have an opportunity to respond. After Coach responds or fails to respond, University shall notify Coach whether, and if so when, the action will be effective.

5.1.3 In the event of any termination for good or adequate cause, the University's obligation to provide compensation and benefits to Coach, whether direct, indirect, supplemental or collateral, shall cease as of the date of such termination, and the University shall not be liable for the loss of any collateral business opportunities or other benefits, perquisites, or income resulting from outside activities or from any other sources.

5.1.4 If found in violation of NCAA regulations, Coach shall, in addition to the provisions of Section 5.1, be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures. This section applies to violations occurring at the University or at previous institutions at which the Coach was employed.

**5.2    Termination of Coach for Convenience of University.**

5.2.1 At any time after commencement of this Agreement, University, for its own convenience, may terminate this Agreement by giving ten (10) days prior written notice to Coach.

5.2.2 In the event that University terminates this Agreement for its own convenience, University shall be obligated to pay Coach, as liquidated damages and not a penalty, the salary set forth in section 3.1.1(a), excluding all deductions required by law, on the regular paydays of University until the term of this Agreement ends ~~withholdings and deductions which in University's opinion are required by law. The liquidated damages payable under this paragraph shall be paid in equal installments on the regular paydays of University until the term of this Agreement would have ended but for its termination or until Coach obtains reasonably comparable employment, whichever occurs first. In addition, Coach will be entitled to continue his health insurance plan and group life insurance as if he remained a University employee until the term of this Agreement~~ ends ~~would have ended but for its termination or until Coach obtains reasonably comparable employment, whichever occurs first. Coach shall be entitled to no other damages, compensation or fringe benefits,~~ except as otherwise provided herein or required by law.

5.2.3 The parties have both been represented by legal counsel in the contract negotiations and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the Coach may lose certain benefits, supplemental compensation, or outside compensation relating to his employment with University, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by University and the acceptance thereof by Coach shall constitute adequate and reasonable compensation to Coach for the damages and injury suffered by Coach because of such termination by University. The liquidated damages are not, and shall not be construed to be, a penalty.

**5.3    Termination by Coach for Convenience.**

5.3.1 The Coach recognizes that his promise to work for University for the entire term of this Agreement is of the essence of this Agreement. The Coach also recognizes that the University is making a highly valuable investment in his employment by entering into this Agreement and that its investment would be lost were he to resign or otherwise terminate his employment with the University before the end of the contract term.

5.3.2 The Coach, for his own convenience, may terminate this Agreement during its term by giving prior written notice to the University. Termination shall be effective ten (10) days after notice is given to the University.

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5.3.3 If the Coach terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination. If the Coach terminates this Agreement for his convenience he shall pay to the University, as liquidated damages and not a penalty, for the breach of this Agreement the following sum: (a) if the Agreement is terminated on or before October 24, 2005, the sum of \$30,000.00; (b) if the Agreement is terminated between October 25, 2005 and October 24, 2006 inclusive, the sum of \$25,000.00; (c) if the Agreement is terminated between October 25, 2006 and October 24, 2007 inclusive, the sum of \$20,000.00; (d) if the Agreement is terminated between October 25, 2007 and October 24, 2008 ~~April 9, 2002, the sum of \$30,000.00; (b) if the Agreement is terminated between April 10, 2002, and April 9, 2003, inclusive, the sum of \$20,000.00; (c) if the Agreement is terminated between April 10, 2003, and April 9, 2004, inclusive, the sum of \$10,000.~~ The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

5.3.4 The parties have both been represented by legal counsel in the contract negotiations and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the University will incur administrative and recruiting costs in obtaining a replacement for Coach, in addition to potentially increased compensation costs if Coach terminates this Agreement for convenience, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by Coach and the acceptance thereof by University shall constitute adequate and reasonable compensation to University for the damages and injury suffered by it because of such termination by Coach. The liquidated damages are not, and shall not be construed to be, a penalty. This section 5.3.4 shall not apply if Coach terminates this Agreement because of a material breach by the University.

5.3.5 Except as provide elsewhere in this Agreement, if Coach terminates this Agreement for convenience, he shall forfeit his right to receive all supplemental compensation and other payments unpaid as of the date Coach gives notice of termination, unless Coach's right to receive those payments has vested pursuant to the terms of this Agreement.

**5.4 Termination due to Disability or Death of Coach.**

5.4.1 Notwithstanding any other provision of this Agreement, this Agreement shall terminate automatically if Coach becomes totally or permanently disabled as defined by the University's disability insurance carrier, becomes unable to perform the essential functions of the position of head coach, or dies.

5.4.2 If this Agreement is terminated because of Coach's death, Coach's salary and all other benefits shall terminate as of the last day worked, except that the Coach's personal representative or other designated beneficiary shall be paid all

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compensation due or unpaid and death benefits, if any, as may be contained in any fringe benefit plan now in force or hereafter adopted by the University and due to the Coach's estate or beneficiaries thereunder.

5.4.3 If this Agreement is terminated because the Coach becomes totally or permanently disabled as defined by the University's disability insurance carrier, or becomes unable to perform the essential functions of the position of head coach, all salary and other benefits shall terminate, except that the Coach shall be entitled to receive any compensation due or unpaid and any disability-related benefits to which he is entitled by virtue of employment with the University.

5.5 Interference by Coach. In the event of termination, suspension, or reassignment, Coach agrees that Coach will not interfere with the University's student-athletes or otherwise obstruct the University's ability to transact business or operate its intercollegiate athletics program.

5.6 No Liability. The University shall not be liable to Coach for the loss of any collateral business opportunities or any other benefits, perquisites or income from any sources that may ensue as a result of any termination of this Agreement by either party or due to death or disability or the suspension or reassignment of Coach, regardless of the circumstances.

5.7 Waiver of Rights. Because the Coach is receiving a multi-year contract and the opportunity to receive supplemental compensation and because such contracts and opportunities are not customarily afforded to University employees, if the University suspends or reassigns Coach, or terminates this Agreement for good or adequate cause or for convenience, Coach shall have all the rights provided for in this Agreement but hereby releases the University from compliance with the notice, appeal, and similar employment-related rights provide for in the State Board of Education and Board or Regents of the University of Idaho Rule Manual (IDAPA 08) and Governing Policies and Procedures Manual, and the University Faculty-Staff Handbook.

**ARTICLE 6**

6.1 Board Approval. This Agreement shall not be effective until and unless approved of the University's Board of Regents and executed by both parties as set forth below. In addition, the payment of any compensation pursuant to this agreement shall be subject to the approval of the University's Board of Regents, the President, and the Director; the sufficiency of legislative appropriations; the receipt of sufficient funds in the account from which such compensation is paid; and the Board of Regents and University's rules regarding financial exigency.

6.2 University Property. All personal property (excluding vehicle(s) provided through the Vandal Wheels ~~University's courtesy car program~~), material, and articles of information, including, without limitation, keys, credit cards, personnel records, recruiting records, team information, films, statistics or any other personal property, material, or

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data, furnished to Coach by the University or developed by Coach on behalf of the University or at the University's direction or for the University's use or otherwise in connection with Coach's employment hereunder are and shall remain the sole property of the University. Within twenty-four (24) hours of the expiration of the term of this agreement or its earlier termination as provided herein, Coach shall immediately cause any such personal property, materials, and articles of information in Coach's possession or control, ~~as well as any courtesy cars provided to Coach,~~ to be delivered to the Director ~~or such other person(s) as the Director designates.~~

6.3 Assignment. Neither party may assign its rights or delegate its obligations under this Agreement without the prior written consent of the other party.

6.4 Waiver. No waiver of any default in the performance of this Agreement shall be effective unless in writing and signed by the waiving party. The waiver of a particular breach in the performance of this Agreement shall not constitute a waiver of any other or subsequent breach. The resort to a particular remedy upon a breach shall not constitute a waiver of any other available remedies.

6.5 Severability. If any provision of this Agreement is determined to be invalid or unenforceable, the remainder of the Agreement shall not be affected and shall remain in effect.

6.6 Governing Law. This Agreement shall be subject to and construed in accordance with the laws of the state of Idaho as an agreement to be performed in Idaho. Any action based in whole or in part on this Agreement shall be brought in the courts of the state of Idaho.

6.7 Oral Promises. Oral promises of an increase in annual salary or of any supplemental or other compensation shall not be binding upon the University.

6.8 Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform (including financial inability), shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage.

6.9 Confidentiality. The Coach hereby consents and agrees that this document may be released and made available to the public after it is signed by the Coach. The Coach further agrees that all documents and reports he is required to produce under this Agreement may be released and made available to the public at the University's sole discretion.

6.10 Notices. Any notice under this Agreement shall be in writing and be delivered in person or by public or private courier service (including U.S. Postal Service



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6.16 Opportunity to Consult with Attorney. The Coach acknowledges that he has had the opportunity to consult and review this Agreement with an attorney. Accordingly, in all cases, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any party.

**UNIVERSITY**

**COACH**

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Timothy P. White Robert A. Hoover, President Date Leonard Perry Date

**EMPLOYMENT AGREEMENT**

**Changes tracked from State Board approved contract .**

This Employment Agreement (Agreement) is entered into by and between the University of Idaho (University), and Leonard Perry (Coach).

**ARTICLE 1**

1.1. Employment. Subject to the terms and conditions of this Agreement, the University shall employ Coach as the head coach of its intercollegiate men's basketball team. Coach represents and warrants that Coach is fully qualified to serve, and is available for employment, in this capacity.

1.2. Reporting Relationship. Coach shall report and be responsible directly to the University's Director of Athletics (Director) or the Director's designee. Coach shall abide by the reasonable instructions of Director or the Director's designee and shall confer with the Director or the Director's designee on all administrative and technical matters. Coach shall also be under the general supervision of the University's President (President).

1.3. Duties. Coach shall manage and supervise the Team and shall perform such other duties in the University's athletic program as the Director may assign and as may be described elsewhere in this Agreement. The University shall have the right, at any time, to reassign Coach to duties at the University other than as head coach of the Team, provided that Coach's compensation and benefits shall not be affected by any such reassignment, except that the opportunity to earn supplemental compensation as provided in sections 3.2.1 through 3.2.6~~7~~ shall cease.

**ARTICLE 2**

2.1. Term. This Agreement is for a fixed-term appointment of four (4) years, commencing on ~~September 13, 2003~~ October 25, 2004, and terminating, without further notice to Coach, on ~~September 12, 2007~~ October 24, 2008, unless sooner terminated in accordance with other provisions of this Agreement.

2.2. Extension or Renewal. This Agreement is renewable solely upon an offer from the University and an acceptance by Coach, both of which must be in writing and signed by the parties. Any renewal is subject to the prior approval of University's Board of Regents. This Agreement in no way grants to Coach a claim to tenure in employment, nor shall Coach's service pursuant to this agreement count in any way toward tenure at the University.

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**ARTICLE 3**

**3.1 Regular Compensation.**

3.1.1 In consideration of Coach's services and satisfactory performance of this Agreement, the University shall provide to Coach:

- a) An annual salary of \$115,003.20 ~~\$100,006.17~~ per year, payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the Director and President and approved by the University's Board of Regents;
- b) The opportunity to receive such employee benefits as the University provides generally to non-faculty exempt employees; and
- c) The opportunity to receive such employee benefits as the University's Department of Athletics (Department) provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

Coach understands and agrees that University is in the process of reviewing and clarifying policies and procedures regarding leave without pay, or temporary furlough, when warranted by financial conditions. If leave without pay or temporary furlough were imposed, Coach's actual salary would be lower than the annual salary set forth in Paragraph 3.1.1 (a) above. In no event would mandatory leave without pay or temporary furlough exceed fifteen (15) days per fiscal year.

**3.2 Supplemental Compensation**

3.2.1. Each year the Team is the conference champion or co-champion ~~and~~ or becomes eligible for the NCAA tournament pursuant to NCAA Division I guidelines, and ~~also~~ if Coach continues to be employed as University's head men's basketball coach as of the ensuing July 1st, the University shall pay to Coach supplemental compensation in an amount equal to one-thirteenth (1/13) of Coach's Annual Salary during the fiscal year in which the championship ~~and~~ or NCAA tournament eligibility are achieved. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.2 Each year the Team is ranked in the top 25 in any published national final poll of intercollegiate men's basketball teams and if Coach continues to be employed as University's head men's basketball coach as of the ensuing July 1st, the University shall pay Coach supplemental compensation in an amount equal to one-thirteenth (1/26 1/13) of Coach's Annual Salary in effect on the date of the final poll. The

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University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.3 Each year Coach is named Conference Coach of the Year, and if Coach continues to be employed as University's head men's basketball coach as of the ensuing July 1st, Coach shall receive supplemental compensation of \$5,000. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.4 Each year Coach shall be eligible to receive supplemental compensation in an amount up equal to one-thirteenth (1/13) ~~(1/26)~~ of Coach's Annual Salary based on the academic achievement and behavior of Team members. The determination of whether Coach will receive such supplemental compensation and the timing of the payment(s) shall be at the sole discretion of the President in consultation with the Director. The determination shall be based on the following factors: grade point averages; difficulty of major course of study; honors such as scholarships, designation as Academic All-American, and conference academic recognition; progress toward graduation for all athletes, but particularly those who entered the University as academically at-risk students; the conduct of Team members on the University campus, at authorized University activities, in the community, and elsewhere. Any such supplemental compensation paid to Coach shall be accompanied with a detailed justification for the supplemental compensation based on the factors listed above and such justification shall be separately reported to the Board of Regents as a document available to the public under the Idaho Public Records Act.

3.2.5 The Coach shall receive the sum of \$60,000 from the University or the University's designated media outlet(s) or a combination thereof each year during the term of this Agreement in compensation for participation in media programs and public appearances (Programs). Each year, one-half of this sum shall be paid prior to the first regular season men's basketball game, and one-half shall be paid no later than two weeks after the last regular season men's basketball game or post season match, whichever occurs later. Coach's right to receive the second half of such payment shall vest on the date of the Team's last regular season or post-season competition, whichever occurs later, and contingent upon Coach's continued employment as of that date. Coach's right to receive any such media payment under this Paragraph is expressly contingent on Coach's compliance with University's financial stewardship policies as set forth in University's Administrative Procedures Manual Chapter 25. Agreements requiring the Coach to participate in Programs related to his duties as an employee of University are the property of the University. The University shall have the exclusive right to negotiate and contract with all producers of media productions and all parties desiring public appearances by the Coach. Coach agrees to cooperate with the University in order for the Programs to be successful and agrees to provide his services to and perform on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither Coach nor any assistant coaches shall appear without the prior written approval of the Director on any competing radio or television program (including but not limited to a coach's show, call-in show, or interview show) or

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a regularly scheduled news segment, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Director, Coach shall not appear in any commercial endorsements which are broadcast on radio or television that conflict with those broadcast on the University's designated media outlets.

3.2.6 Coach agrees that the University has the exclusive right to operate youth basketball camps on its campus using University facilities. The University shall allow Coach the opportunity to earn supplemental compensation by assisting with the University's camps in Coach's capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the University's youth basketball camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the University's youth basketball camps, the University shall pay Coach the remaining income from the youth basketball camps, less \$500, after all claims, insurance, and expenses of such camps have been paid.

3.2.7 Coach agrees that the University has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff, including Coach, during official practices and games and during times when Coach or the Team is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of University. Coach recognizes that the University is negotiating or has entered into an agreement with Adidas to supply the University with athletic footwear, apparel and/or equipment. Coach agrees that, upon the University's reasonable request, Coach will consult with appropriate parties concerning Adidas product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by Adidas, or give a lecture at an event sponsored in whole or in part by Adidas, or make other educationally-related appearances as may be reasonably requested by the University. Notwithstanding the foregoing sentence, Coach shall retain the right to decline such appearances as Coach reasonably determines to conflict with or hinder his duties and obligations as head men's basketball coach. In order to avoid entering into an agreement with a competitor of Adidas, Coach shall submit all outside consulting agreements to the University for review and approval prior to execution. Coach shall also report such outside income to the University in accordance with NCAA rules. Coach further agrees that Coach will not endorse any athletic footwear, apparel and/or equipment products, including Adidas, and will not participate in any messages or promotional appearances which contain a comparative or qualitative description of athletic footwear, apparel or equipment products.

3.3 General Conditions of Compensation. All compensation provided by the University to Coach is subject to deductions and withholdings as required by law or the terms and conditions of any fringe benefit in which Coach participates. However, if any fringe benefit is based in whole or in part upon the compensation provided by the University to Coach, such fringe benefit shall be based only on the compensation provided pursuant to section 3.1.1, except to the extent required by the terms and conditions of a specific fringe benefit program.

**ARTICLE 4**

4.1. Coach's Specific Duties and Responsibilities. In consideration of the compensation specified in this Agreement, Coach, in addition to the obligations set forth elsewhere in this Agreement, shall:

4.1.1. Devote Coach's full time and best efforts to the performance of Coach's duties under this Agreement;

4.1.2. Develop and implement programs and procedures with respect to the evaluation, recruitment, training, and coaching of Team members which enable them to compete successfully and reasonably protect their health, safety, and well-being;

4.1.3. Observe and uphold all academic standards, requirements, and policies of the University and encourage Team members to perform to their highest academic potential and to graduate in a timely manner; and

4.1.4. Know, recognize, and comply with all applicable laws and the policies, rules and regulations of the University, the University's governing board, the conference, and the NCAA; supervise and take appropriate steps to ensure that Coach's assistant coaches, any other employees for whom Coach is administratively responsible, and the members of the Team know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the Director and to the Department's Director of Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall cooperate fully with the University and Department at all times. The names or titles of employees whom Coach supervises are attached as Exhibit A ~~Exhibit C~~. The applicable laws, policies, rules, and regulations include: (a) State Board of Education and Board of Regents of the University of Idaho Governing Policies and Procedures and Rule Manual; (b) University's Handbook; (c) University's Administrative Procedures Manual; (d) the policies of the Department; (e) NCAA rules and regulations; and (f) the rules and regulations of the men's basketball conference of which the University is a member.

4.2 Outside Activities. Coach shall not undertake any business, professional or personal activities, or pursuits that would prevent Coach from devoting Coach's full time and best efforts to the performance of Coach's duties under this Agreement, that would otherwise detract from those duties in any manner, or that, in the opinion of the University, would reflect adversely upon the University or its athletic program. Subject to the terms and conditions of this Agreement, Coach may, with the prior written approval of the Director, who may consult with the President, enter into separate arrangements for outside activities and endorsements which are consistent with Coach's obligations under this Agreement. Coach may not use the University's name, logos, or trademarks

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in connection with any such arrangements without the prior written approval of the Director and the President.

4.3 NCAA Rules. In accordance with NCAA rules, Coach shall obtain prior written approval from the University's President for all athletically related income and benefits from sources outside the University and shall report the source and amount of all such income and benefits to the University's President whenever reasonably requested, but in no event less than annually before the close of business on June 30th of each year or the last regular University work day preceding June 30th. The report shall be in a format reasonably satisfactory to University. In no event shall Coach accept or receive directly or indirectly any monies, benefits, or gratuities whatsoever from any person, association, corporation, University booster club, University alumni association, University foundation, or other benefactor, if the acceptance or receipt of the monies, benefits, or gratuities would violate applicable law or the policies, rules, and regulations of the University, the University's governing board, the conference, or the NCAA.

4.4 Hiring Authority. Coach shall have the responsibility and the sole authority to recommend to the Director the hiring and termination of assistant coaches for the Team, but the decision to hire or terminate an assistant coach shall be made by the Director and shall, when necessary or appropriate, be subject to the approval of President and the University's Board of Regents.

4.5 Scheduling. Coach shall consult with, and may make recommendations to, the Director or the Director's designee with respect to the scheduling of Team competitions, but the final decision shall be made by the Director or the Director's designee.

4.6 Other Coaching Opportunities. Coach shall not, under any circumstances, interview for, negotiate for, or accept employment as a coach at any other institution of higher education or with any professional sports team, requiring performance of duties prior to the expiration of this Agreement, without the prior approval of the Director. Such approval shall not unreasonably be withheld.

**ARTICLE 5**

5.1 Termination of Coach for Cause. The University may, in its discretion, suspend Coach from some or all of Coach's duties, temporarily or permanently, and with or without pay; reassign Coach to other duties; or terminate this Agreement at any time for good or adequate cause, as those terms are defined in applicable rules and regulations.

5.1.1 In addition to the definitions contained in applicable rules and regulations, University and Coach hereby specifically agree that the following shall constitute good or adequate cause for suspension, reassignment, or termination of this Agreement:

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- a) A deliberate or major violation of Coach's duties under this agreement or the refusal or unwillingness of Coach to perform such duties in good faith and to the best of Coach's abilities;
- b) The failure of Coach to remedy any violation of any of the terms of this agreement within 30 days after written notice from the University;
- c) A deliberate or major violation by Coach of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference or the NCAA, including but not limited to any such violation which may have occurred during the employment of Coach at another NCAA or NAIA member institution;
- d) Ten (10) working days' absence of Coach from duty without the University's consent;
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the University's judgment, reflect adversely on the University or its athletic programs;
- f) The failure of Coach to represent the University and its athletic programs positively in public and private forums;
- g) The failure of Coach to fully and promptly cooperate with the NCAA or the University in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA;
- h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team; or
- i) A violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team if Coach knew or should have known of the violation and could have prevented it by ordinary supervision.

5.1.2 Suspension, reassignment, or termination for good or adequate cause shall be effectuated by the University as follows: before the effective date of the suspension, reassignment, or termination, the Director or his designee shall provide

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Coach with notice, which notice shall be accomplished in the manner provided for in this Agreement and shall include the reason(s) for the contemplated action. Coach shall then have an opportunity to respond. After Coach responds or fails to respond, University shall notify Coach whether, and if so when, the action will be effective.

5.1.3 In the event of any termination for good or adequate cause, the University's obligation to provide compensation and benefits to Coach, whether direct, indirect, supplemental or collateral, shall cease as of the date of such termination, and the University shall not be liable for the loss of any collateral business opportunities or other benefits, perquisites, or income resulting from outside activities or from any other sources.

5.1.4 If found in violation of NCAA regulations, Coach shall, in addition to the provisions of Section 5.1, be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures. This section applies to violations occurring at the University or at previous institutions at which the Coach was employed.

5.2 Termination of Coach for Convenience of University.

5.2.1 At any time after commencement of this Agreement, University, for its own convenience, may terminate this Agreement by giving ten (10) days prior written notice to Coach.

5.2.2 In the event that University terminates this Agreement for its own convenience, University shall be obligated to pay Coach, as liquidated damages and not a penalty, the salary set forth in section 3.1.1(a), excluding all deductions required by law, on the regular paydays of University until the term of this Agreement ends or until Coach obtains reasonably comparable employment, whichever occurs first. In addition, Coach will be entitled to continue his health insurance plan and group life insurance as if he remained a University employee until the term of this Agreement ends or until Coach obtains reasonably comparable employment, whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law.

5.2.3 The parties have both been represented by legal counsel in the contract negotiations and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the Coach may lose certain benefits, supplemental compensation, or outside compensation relating to his employment with University, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by University and the acceptance thereof by Coach shall constitute adequate and reasonable compensation to Coach for the damages and injury suffered by Coach because of such termination by University. The liquidated damages are not, and shall not be construed to be, a penalty.

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5.3 Termination by Coach for Convenience.

5.3.1 The Coach recognizes that his promise to work for University for the entire term of this Agreement is of the essence of this Agreement. The Coach also recognizes that the University is making a highly valuable investment in his employment by entering into this Agreement and that its investment would be lost were he to resign or otherwise terminate his employment with the University before the end of the contract term.

5.3.2 The Coach, for his own convenience, may terminate this Agreement during its term by giving prior written notice to the University. Termination shall be effective ten (10) days after notice is given to the University.

5.3.3 If the Coach terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination. If the Coach terminates this Agreement for his convenience he shall pay to the University, as liquidated damages and not a penalty, for the breach of this Agreement the following sum: (a) if the Agreement is terminated on or before October 24~~April 9~~, 2005, the sum of \$30,000.00; (b) if the Agreement is terminated between October 25~~April 10~~, 2005 and October 24~~April 9~~, 2006 inclusive, the sum of \$25,000.00; (c) if the Agreement is terminated between October 25~~April 10~~, 2006 and October 24~~April 9~~, 2007 inclusive, the sum of \$20,000.00; (d) if the Agreement is terminated between October 25~~April 10~~, 2007 and October 24~~April 9~~, 2008 inclusive, the sum of \$10,000. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

5.3.4 The parties have both been represented by legal counsel in the contract negotiations and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the University will incur administrative and recruiting costs in obtaining a replacement for Coach, in addition to potentially increased compensation costs if Coach terminates this Agreement for convenience, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by Coach and the acceptance thereof by University shall constitute adequate and reasonable compensation to University for the damages and injury suffered by it because of such termination by Coach. The liquidated damages are not, and shall not be construed to be, a penalty. This section 5.3.4 shall not apply if Coach terminates this Agreement because of a material breach by the University.

5.3.5 Except as provide elsewhere in this Agreement, if Coach terminates this Agreement for convenience, he shall forfeit his right to receive all supplemental compensation and other payments ~~to the extent permitted by law his right to receive all supplemental compensation and other payments~~ unpaid as of the date Coach gives notice of termination, unless Coach's right to receive those payments has

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vested pursuant to the terms of this Agreement.

**5.4    Termination due to Disability or Death of Coach.**

5.4.1 Notwithstanding any other provision of this Agreement, this Agreement shall terminate automatically if Coach becomes totally or permanently disabled as defined by the University's disability insurance carrier, becomes unable to perform the essential functions of the position of head coach, or dies.

5.4.2 If this Agreement is terminated because of Coach's death, Coach's salary and all other benefits shall terminate as of the last day worked, except that the Coach's personal representative or other designated beneficiary shall be paid all compensation due or unpaid and death benefits, if any, as may be contained in any fringe benefit plan now in force or hereafter adopted by the University and due to the Coach's estate or beneficiaries thereunder.

5.4.3 If this Agreement is terminated because the Coach becomes totally or permanently disabled as defined by the University's disability insurance carrier, or becomes unable to perform the essential functions of the position of head coach, all salary and other benefits shall terminate, except that the Coach shall be entitled to receive any compensation due or unpaid and any disability-related benefits to which he is entitled by virtue of employment with the University.

5.5    Interference by Coach. In the event of termination, suspension, or reassignment, Coach agrees that Coach will not interfere with the University's student-athletes or otherwise obstruct the University's ability to transact business or operate its intercollegiate athletics program.

5.6    No Liability. The University shall not be liable to Coach for the loss of any collateral business opportunities or any other benefits, perquisites or income from any sources that may ensue as a result of any termination of this Agreement by either party or due to death or disability or the suspension or reassignment of Coach, regardless of the circumstances.

5.7    Waiver of Rights. Because the Coach is receiving a multi-year contract and the opportunity to receive supplemental compensation and because such contracts and opportunities are not customarily afforded to University employees, if the University suspends or reassigns Coach, or terminates this Agreement for good or adequate cause or for convenience, Coach shall have all the rights provided for in this Agreement but hereby releases the University from compliance with the notice, appeal, and similar employment-related rights provide for in the State Board of Education and Board or Regents of the University of Idaho Rule Manual (IDAPA 08) and Governing Policies and Procedures Manual, and the University Faculty-Staff Handbook.

**ARTICLE 6**

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6.1 Board Approval. This Agreement shall not be effective until and unless approved of the University's Board of Regents and executed by both parties as set forth below. In addition, the payment of any compensation pursuant to this agreement shall be subject to the approval of the University's Board of Regents, the President, and the Director; the sufficiency of legislative appropriations; the receipt of sufficient funds in the account from which such compensation is paid; and the Board of Regents and University's rules regarding financial exigency.

6.2 University Property. All personal property (excluding vehicle(s) provided through the Vandal Wheels program), material, and articles of information, including, without limitation, keys, credit cards, personnel records, recruiting records, team information, films, statistics or any other personal property, material, or data, furnished to Coach by the University or developed by Coach on behalf of the University or at the University's direction or for the University's use or otherwise in connection with Coach's employment hereunder are and shall remain the sole property of the University. Within twenty-four (24) hours of the expiration of the term of this agreement or its earlier termination as provided herein, Coach shall immediately cause any such personal property, materials, and articles of information in Coach's possession or control to be delivered to the Director.

6.3 Assignment. Neither party may assign its rights or delegate its obligations under this Agreement without the prior written consent of the other party.

6.4 Waiver. No waiver of any default in the performance of this Agreement shall be effective unless in writing and signed by the waiving party. The waiver of a particular breach in the performance of this Agreement shall not constitute a waiver of any other or subsequent breach. The resort to a particular remedy upon a breach shall not constitute a waiver of any other available remedies.

6.5 Severability. If any provision of this Agreement is determined to be invalid or unenforceable, the remainder of the Agreement shall not be affected and shall remain in effect.

6.6 Governing Law. This Agreement shall be subject to and construed in accordance with the laws of the state of Idaho as an agreement to be performed in Idaho. Any action based in whole or in part on this Agreement shall be brought in the courts of the state of Idaho.

6.7 Oral Promises. Oral promises of an increase in annual salary or of any supplemental or other compensation shall not be binding upon the University.

6.8 Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to





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**INSTITUTION / AGENCY AGENDA**  
**UNIVERSITY OF IDAHO - continued**

**SUBJECT**

A request by the University of Idaho (UI) for approval to proceed with an employee separation agreement and general release.

**APPLICABLE STATUTE, RULE, OR POLICY**

Items submitted for review and approval according to Board Policy Sections II. F.1.b.4 and V.I.7.

Section 67-2345 (1) (b), Idaho Code

**DISCUSSION**

Pursuant to Idaho Code Section 67-2345 (1)(b) this item will be discussed in Executive Session.

**IMPACT**

Once approved the changes can be processed on the State Employee Information System.

**STAFF COMMENTS AND RECOMMENDATIONS**

Staff has reviewed the proposed agreement and has no comment or recommendation.

**BOARD ACTION**

A motion to allow the University of Idaho to proceed with an employee separation agreement.

Moved by \_\_\_\_\_ Seconded by \_\_\_\_\_ Carried Yes \_\_\_\_\_ No \_\_\_\_\_

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**REFERENCE: APPLICABLE STATUTE, RULE, OR POLICY**

Idaho State Board of Education

**GOVERNING POLICIES AND PROCEDURES**

**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES**

**B. Appointment Authority and Procedures**

**August 2002**

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**B. Appointment Authority and Procedures**

1. Nothing herein may be construed to be in limitation of the powers of the Board as defined by Sections 33-3006, 33-3104, 33-2806, and 33-4005, Idaho Code, or as otherwise defined in the Idaho Constitution or Code.

2. **Delegation of Authority**

The Board delegates all authority for personnel management not specifically retained to the executive director and the chief executive officers consistent with the personnel policies and procedures adopted by the Board. In fulfilling this responsibility, the executive director and chief executive officers, or their designees, may exercise their authority consistent with these policies and procedures. Provided, however, that the Board retains the authority for taking final action on any matter so identified anywhere in these policies and procedures.

3. **Specifically Reserved Board Authority**

(Note: This is not an exclusive or exhaustive list and other reservations of Board authority may be found in other areas of these policies and procedures.) Board approval is required for the following:

a. **Position Authorizations**

(1) Any permanent new position, regardless of funding source, requires Board approval. Agenda Item Format: Requests for new position authorizations must include the following information:

- (a) position title;
- (b) type of position;
- (c) FTE
- (d) Term of appointment;
- (e) Effective date;
- (f) approximate salary range;
- (g) funding source;
- (h) area or department of assignment;

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**OCTOBER 20-21, 2004**

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- (i) a description of the duties and responsibilities of the position; and
- (j) a complete justification for the position

(2) Any permanent position being deleted. The affected position should be identified by type, title, salary, area or department of assignment, and funding source.

b. The initial appointment of all employees to any type of position at a salary that is equal to or higher than 75% of the chief executive officer's annual salary.

c. The employment agreement of any head coach or athletic director (at the institutions only) longer than one year, and all amendments thereto.

d. The criteria established by the institutions for initial appointment to faculty rank and for promotion in rank, as well as any additional faculty ranks and criteria as may be established by an institution other than those provided for in these policies (see subsection G.) Any exceptions to the approved criteria also require Board approval.

e. The procedures established for periodic performance review of tenured faculty members. (see subsection G.)

**REFERENCE - APPLICABLE STATUTE, RULE, OR POLICY - continued**

Idaho State Board of Education  
GOVERNING POLICIES AND PROCEDURES  
SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES  
F. Policies Regarding Nonclassified Employees

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April 2002

**F. Policies Regarding Nonclassified Employees**

**1. Employment Terms**

**b. Employment Contracts**

(4) No contract of employment with such an employee may exceed one (1) year without the prior express approval of the Board. Employment beyond the contract period may not be legally presumed. Renewal of an employment contract is subject solely to the discretion of the chief executive officer of the institution or school, and, where applicable, of the Board.

**REFERENCE - APPLICABLE STATUTE, RULE, OR POLICY - continued**

Idaho State Board of Education

GOVERNING POLICIES AND PROCEDURES

SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES

H. Policies Regarding Coaching Personnel and Athletic Directors

August 2002

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**H. Policies Regarding Coaching Personnel and Athletic Directors (Institution Employees Only)**

**1. Agreements Longer Than One Year**

The chief executive officer of an institution is authorized to enter into a contract for the services of a head coach or athletic director with that institution for a term of more than one (1) year, but not more than five (5) years, subject to approval by the Board as to the terms, conditions, and compensation thereunder, and subject further to the condition that the contract of employment carries terms and conditions of future obligations of the coach or athletic director to the institution for the performance of such contracts. Each contract for the services shall follow the general form approved by the Board as a model contract. Such contract shall define the entire employment relationship between the Board and the coach or athletic director and may incorporate by reference applicable Board and institutional policies and rules, and applicable law.

**2. Agreements For One Year Or Less**

The chief executive officer of an institution is authorized to enter into a contract for the services of a head coach or athletic director with that institution for a term of one (1) year or less without Board approval. Each contract shall follow the general form approved by the Board as a model contract. Such contract shall define the entire employment relationship between the Board and the coach or athletic director and may incorporate by reference applicable Board and institutional policies and rules, and applicable law.

**3. Academic Incentives**

Each contract for a head coach shall include incentives, separate from any other incentives, based upon the academic performance of the student athletes whom the coach supervises. The chief executive officer of the institution shall determine such incentives. Each institution shall report to the Board annually concerning each coach's performance relative to the academic incentives of the coach's contract.

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
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4. Part-time Coaches Excepted

The chief executive officer of an institution is authorized to hire part-time head coaches as provided in the policies of the institution. Applicable Board policies shall be followed.

5. Assistant Coaches

The chief executive officer of the institution is authorized to hire assistant coaches as provided in the policies of the institution. Applicable Board policies shall be followed.

**REFERENCE - APPLICABLE STATUTE, RULE, OR POLICY - continued**

Idaho State Board of Education

**GOVERNING POLICIES AND PROCEDURES**

SECTION: V. FINANCIAL AFFAIRS

Subsection: I. Real and Personal Property and Services

April 2002

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**Subsection I: Real and Personal Property and Services**

**7. Litigation**

The chief executive officer may negotiate settlement regarding litigation matters, or any claims made that may result in litigation, for up to \$25,000. All such settlements must be reported to the Board in executive session at the next regularly scheduled meeting.

**BUSINESS AFFAIRS AND HUMAN RESOURCES  
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**REFERENCE - APPLICABLE STATUTE, RULE, OR POLICY - continued**

**Idaho Statutes**

TITLE 67  
STATE GOVERNMENT AND STATE AFFAIRS  
CHAPTER 23  
MISCELLANEOUS PROVISIONS

**67-2345. EXECUTIVE SESSIONS -- WHEN AUTHORIZED.**

(1) Nothing contained in this act shall be construed to prevent, upon a two-thirds (2/3) vote recorded in the minutes of the meeting by individual vote, a governing body of a public agency from holding an executive session during any meeting, after the presiding officer has identified the authorization under this act for the holding of such executive session. An executive session may be held:

- (a) To consider hiring a public officer, employee, staff member or individual agent. This paragraph does not apply to filling a vacancy in an elective office;
- (b) To consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, or public school student;
- (c) To conduct deliberations concerning labor negotiations or to acquire an interest in real property which is not owned by a public agency;
- (d) To consider records that are exempt from disclosure as provided in chapter 3, title 9, Idaho Code;
- (e) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations;
- (f) To consider and advise its legal representatives in pending litigation or where there is a general public awareness of probable litigation;
- (g) By the commission of pardons and parole, as provided by law;
- (h) By the sexual offender classification board, as provided by chapter 83, title 18, Idaho Code;
- (i) By the custody review board of the Idaho department of juvenile corrections, as provided by law.

(2) Labor negotiations may be conducted in executive session if either side requests closed meetings. Notwithstanding the provisions of section 67-2343, Idaho Code, subsequent sessions of the negotiations may continue without further public notice.

(3) No executive session may be held for the purpose of taking any final action or making any final decision.

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**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**OCTOBER 20-21, 2004**

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**INSTITUTION / AGENCY AGENDA**  
**OFFICE OF THE IDAHO STATE BOARD OF EDUCATION**

**SUBJECT**

A request by the Office of the State Board of Education to hire a Chief Academic Officer.

**APPLICABLE STATUTE, RULE, OR POLICY**

Idaho State Board of Education Governing Policies and Procedures, Section II.B.3.b.

**BACKGROUND**

OSBE is reporting the hiring of the new Chief Academic Officer in Academic Affairs at a salary equal to or greater than 75% of the executive director's base salary. The Chief Academic Officer is a key position in the Office of the State Board of Education and was vacated by the previous incumbent in June 2004.

**DISCUSSION**

A request by the Office of the State Board of Education for approval of:

- appointment of Marilyn E. Davis as Chief Academic Officer (1.0 FTE) at a salary equal to or greater than 75% of the executive director's base salary supported by appropriated funds.

**IMPACT**

Once approved, the action to hire Dr. Davis can be processed through the State Employee Information System.

**STAFF COMMENTS AND RECOMMENDATIONS**

The request has been reviewed and is consistent with Board policy.

**BOARD ACTION**

A motion to approve the request by the Office of the State Board of Education to hire Marilyn E. Davis as Chief Academic Officer in Academic Affairs (1.0 FTE) at a salary equal to or greater than 75% of the executive director's base salary.

Moved by \_\_\_\_\_ Seconded by \_\_\_\_\_ Carried Yes \_\_\_\_\_ No \_\_\_\_\_

**BUSINESS AFFAIRS AND HUMAN RESOURCES  
OCTOBER 20-21, 2004**

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**INSTITUTION / AGENCY AGENDA  
OFFICE OF THE STATE BOARD OF EDUCATION - continued**

**SALARY EQUAL TO/GREATER THAN 75% OF CHIEF EXECUTIVE OFFICER BASE  
SALARY**

Name of Appointee:	Marilyn E. Davis
Position title:	Chief Academic Officer
Type of Position:	Non-classified
FTE:	1.00
Term of Appointment:	Non-classified, at-will
Effective Date:	27-Sep-04
Salary Range:	\$87,006
Funding Source:	General Funds
Area/Department of Assignment:	Academic Affairs
Duties and Responsibilities:	Chief Academic Officer is a staff officer of the State Board of Education, reporting to the Executive Director. The purpose of this position is to provide staff support to the State Board of Education with the Board's responsibility for the general supervision and governance of Idaho's colleges and universities, community colleges, professional technical education and Idaho's public K-20 school system. The Chief Academic Officer consults at all levels of educational services, and builds and maintains professional relations with the education community throughout the state, region, and nation.
Justification:	This key position in the Office of the State Board of Education became vacant June 4, 2004.

**INSTITUTION / AGENCY AGENDA  
AGENCIES AND INSTITUTIONS OF THE STATE BOARD**

**SUBJECT**

First Reading – Amendment of Board Policy II.B.3 – Vacant Positions

**APPLICABLE STATUTE, RULE, OR POLICY**

Idaho State Board of Education Governing Policies & Procedures Section II.B.3.a.(1).

Idaho State Board of Education Governing Policies & Procedures Section I.A.4.a-b.

**BACKGROUND**

Positions that are vacant for several years in the state payroll system must be reestablished by the Division of Financial Management (DFM) before being filled by the institution. Some of these positions have been brought before the Board for reauthorization, even though the position may have remained in the institution's operating budget while vacant while others have not.

The filling of positions has been reported inconsistently in the past. Currently, some new positions are individually itemized in the Board meeting agenda, some in the operating budgets, while others may not be reported at all.

**DISCUSSION**

Board policy states, "(A)ny permanent new position, regardless of funding source, requires Board approval."

Institutions have vacant positions that are no longer listed on the state employee information system because that position has been vacant for several years. However, many of these positions are displayed in the institution's operating budgets. When the institutions wish to reactivate these positions (onto the state payroll system), a new set-up action is required. The President's Council and Executive Director, working with DFM, have agreed to seek Board authorization to reactivate any position if a new position set-up document is required to reestablish the position.

A related item is the Board practice of approving institutional operating budgets each June. The budgets presented to the Board are for General Education only and do not include all funding sources (such as auxiliary and local funds, which do fund a large number of positions). Through the budget approval process, institutions receive authorization for numerous new positions that may not have been individually identified for Board consideration. Therefore, positions in the institutional operating budgets should only include those that have been previously approved by the Board. Positions that have been vacant more than three (3) years should not be included in institutional operating budgets, as these positions need to be reinstated separately by Board approval.

**BUSINESS AFFAIRS AND HUMAN RESOURCES  
OCTOBER 20-21, 2004**

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**INSTITUTION / AGENCY AGENDA**

**AGENCIES AND INSTITUTIONS OF THE STATE BOARD - continued**

**IMPACT**

The suggested change will result in better communication and review between institutions, the Board and DFM.

**STAFF COMMENTS AND RECOMMENDATIONS**

This issue is being brought before the Board in an effort to bring closure to a long-standing situation regarding how positions are reported on the state payroll system vs. at the institution level. The President's Council has agreed to seek Board approval for the positions that have been vacant for more than three (3) several years.

Board staff and the Financial Vice President's group have had several discussions of this issue and are ready to proceed per Board approval.

**BOARD ACTION**

A motion to approve the first reading of amendments to Board Policy II.B.3., a process by which the institutions will request specific reauthorization from the Board to fill any position that has been vacant for more than three (3) years. As part of this motion, institutions agree to not include any position in their operating budget if that position has been vacant for more than three (3) years.

Moved by \_\_\_\_\_ Seconded by \_\_\_\_\_ Carried Yes \_\_\_\_\_ No \_\_\_\_\_

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**OCTOBER 20-21, 2004**

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**FIRST READING**

Idaho State Board of Education

**GOVERNING POLICIES AND PROCEDURES**

**SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES**

**SUBSECTION B: Appointment Authority & Procedures**

~~August, 2002~~ October, 2004

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**B. Appointment Authority and Procedures**

**3. Specifically Reserved Board Authority**

(Note: This is not an exclusive or exhaustive list and other reservations of Board authority may be found in other areas of these policies and procedures.) Board approval is required for the following:

**a. Position Authorizations**

- (1) (1) Any permanent new position (including a reactivated position when vacant more than three (3) years), regardless of funding source, requires Board approval.

Agenda Item Format: Requests for new position authorizations must include the following information:

- (a) position title;
- (b) type of position;
- (c) FTE
- (d) Term of appointment;
- (e) Effective date;
- (f) approximate salary range;
- (g) funding source;
- (h) area or department of assignment;
- (i) a description of the duties and responsibilities of the position; and
- (j) a complete justification for the position

- (2) Any permanent position being deleted. The affected position should be identified by type, title, salary, area or department of assignment, and funding source.

- b. The initial appointment of all employees to any type of position at a salary that is equal to or higher than 75% of the chief executive officer's annual salary.
- c. The employment agreement of any head coach or athletic director (at the institutions only) longer than one year, and all amendments thereto.

**FIRST READING - continued**

- d. The criteria established by the institutions for initial appointment to faculty rank and for promotion in rank, as well as any additional faculty ranks and criteria as may be established by an institution other than those provided for in these policies (see subsection G.) Any exceptions to the approved criteria also require Board approval.
- e. The procedures established for periodic performance review of tenured faculty members. (see subsection G.)

**REFERENCE - APPLICABLE STATUTE, RULE, OR POLICY**

Idaho State Board of Education

**GOVERNING POLICIES AND PROCEDURES**

**SECTION: I. GENERAL GOVERNING POLICIES AND PROCEDURES**

**Subsection: A. Policy-Making Authority**

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**4. Conformance with State and Federal Law**

All Board Governing Policies and Procedures and the internal policies and procedures of its institutions, agencies and school will comply with and be in conformance to applicable laws.

**Adoption, Amendment, or Repeal of Board Policies**

a. Board policies may be adopted by majority vote at any regular or special meeting of the Board. The adoption, amendment, or repeal of a Board policy may be requested by any member of the Board, the executive director, or any chief executive officer. Persons who are Board employees, or students or student groups, must file a written request with the chief executive officer of an institution, agency or school, or his or her designee, to receive Board consideration. An Idaho resident, other than those described above, may file a written request with the executive director for Board consideration of a proposal. Regardless of the source, a statement of the proposed adoption, amendment, or repeal must be presented to the executive director for transmittal to the Board. If the subject matter of the presentation concerns an agency, institution, school, or department of the Board, the executive director will also notify the appropriate chief executive officer of the nature of the request.

b. Board action on any proposal will not be taken earlier than the next regular or special meeting following Board approval for first reading. During the interim between the first reading and Board action, the chief executive officers will seek to discuss and review the proposal with faculty, staff, or other Board employees and students or student groups, as appropriate. The chief executive officers will transmit summaries of oral statements and written comments on the proposal to the executive director. After thorough consideration, the proposal will be presented by the executive director to the Board for action.

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