

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**APRIL 17-18, 2008**

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<b>TAB</b>	<b>DESCRIPTION</b>	<b>ACTION</b>
1	<b>UNIVERSITY OF IDAHO</b> Employment Contract - Head Men's Basketball Coach	Motion to approve
2	<b>UNIVERSITY OF IDAHO</b> Settlement Agreement	Motion to approve
3	<b>BOISE STATE UNIVERSITY</b> Salary Increase – Head Women's Basketball Coach	Motion to approve
4	<b>BOISE STATE UNIVERSITY</b> Selland College Closure	Motion to approve

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**UNIVERSITY OF IDAHO**

**SUBJECT**

Employment contract - head men's basketball coach

**APPLICABLE STATUTE, RULE, OR POLICY**

Idaho State Board of Education Governing Policies & Procedures Section II.H.1.

**DISCUSSION**

The University of Idaho has hired, subject to Board approval, a new head men's basketball coach. The primary terms of the agreement are set forth below, and the entire contract and matrix comparison to the Board model contract are attached.

**IMPACT**

The term of the Employment Contract is five years, commencing on March 24, 2008, and terminating on March 23, 2013.

The annual base salary is as follows:

From March 24, 2008 through March 23, 2009: \$117,000.00  
From March 24, 2009 through March 23, 2010: \$124,820.80  
From March 24, 2010 through March 23, 2011: \$132,808.00  
From March 24, 2011 through March 23, 2012: \$140,816.00  
From March 24, 2012 through March 23, 2013: \$148,824.00

The salary increases are expressly contingent upon the following: (1) academic achievement and behavior of Team members, as described in Paragraph 3.2.3 of this Agreement; (2) appropriate behavior by, and supervision of, all assistant coaches, as determined by the Director; (3) compliance with the University's financial stewardship policies as set forth in University's Administrative Procedures Manual Chapter 25; and (4) approval by the President, in the President's sole discretion.

There is an annual media payment of \$60,000 and the following incentive/supplemental compensation provisions:

- Conference champions or co-champion or NCAA tournament eligibility = 1/13 of annual salary
- Top 25 national ranking at season end = 1/13 of annual salary
- Conference Coach of the Year = \$5,000
- Academic achievement and behavior of team = \$2,000 - \$5,000 based on national rank within the sport
- Summer basketball camp = Remaining income from any university operated camp, less \$500, after all claims, insurance, and expenses of

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camp have been paid, or in the event university elects not to operate a camp, Coach may do so within Board guidelines for such camps.

**ATTACHMENTS**

Attachment 1 – Employment Contract	Page 3
Attachment 2 – Employment Contract-Redline Version	Page 19
Attachment 3 – Contract Comparison Matrix	Page 35

**STAFF COMMENTS AND RECOMMENDATIONS**

The contract includes an incentive payment of \$2,000-\$5,000 if the basketball team's cumulative APR ranks nationally within the applicable sport above the 50th percentile. As reported by the National Collegiate Athletic Association (NCAA), the most recent percentile rank for the 2005-06 academic year is 10<sup>th</sup>-20<sup>th</sup> percentile for the University of Idaho basketball team.

The contract includes an incentive payment of 20% of the gate receipts above \$35,000 and 25% above \$50,000. Gates receipts for the previous two years were \$66,279 for 2006 and \$60,023 for 2007. Gate receipts for 2008 were estimated at \$35,000. Based on gate receipts of \$60,000, this incentive would amount to \$7,500.

Staff recommends approval.

**BOARD ACTION**

A motion to approve the University of Idaho's employment contract with head basketball coach, Don Verlin.

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

**EMPLOYMENT AGREEMENT**

This Employment Agreement (Agreement) is entered into by and between the University of Idaho (University), and Don Verlin (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 shall cease.

ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of five (5) years, commencing on March 24, 2008, and terminating, without further notice to Coach, on March 23, 2013, 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 as follows:
  - i. From March 24, 2008 through March 23, 2009:  
\$117,000 per year;
  - ii. From March 24, 2009 through March 23, 2010:  
\$124,820.80
  - iii. From March 24, 2010 through March 23, 2011:  
\$132,808.
  - iii. From March 24, 2011 through March 23, 2012:  
\$140,816.00
  - iv. From March 24, 2012 through March 23, 2013:  
\$148,824.

The above salary amounts are payable in biweekly installments in accordance with normal University procedures. The salary increases in paragraphs ii, iii, and iv are expressly contingent upon the following: (1) academic achievement and behavior of Team members, as described in Paragraph 3.2.4 of this Agreement; (2) appropriate behavior by, and supervision of, all assistant coaches, as determined by the Director; (3) compliance with the University's financial stewardship policies as set forth in University's Administrative Procedures Manual Chapter 25; and (4) approval by the President, in the President's sole discretion.

- 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.

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3.2 Supplemental Compensation

3.2.1. Each year the Team is the conference champion or co-champion or becomes eligible for the NCAA tournament pursuant to NCAA Division I guidelines, 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 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 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 (1/13) 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 based on the academic achievement and behavior of Team members if the Team's cumulative APR ranks nationally within the applicable sport above the 50th percentile as follows:

National rank within sport  
50th - 60th % = \$2,000  
60th - 70th % = \$3,000  
70th – 80th % = \$4,000  
80th % or above = \$5,000

Any such supplemental compensation paid to Coach shall be accompanied with a 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

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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 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 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 for 14 victories; an additional \$5,000 for 17 victories; and an additional \$5,000 for 20 victories. The victories will include contests in both non-conference and conference competition. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.7 Each year gate receipts for men's basketball exceed \$35,000, 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 20% of the gate receipts that exceed \$35,000 and 25% of the gate receipts that exceed \$50,000. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.8 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.

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Alternatively, in the event the University notifies Coach, in writing that it does not intend to operate youth basketball camps for a particular period of time during the term of this Agreement, then, during such time period, Coach shall be permitted to operate youth basketball camps on the University's campus and using its facilities under the following terms and conditions:

- a) The summer youth camp operation reflects positively on the University of Idaho and the Department;
- b) The summer youth camp is operated by Coach directly or through a private enterprise owned and managed by Coach. The Coach shall not use University of Idaho personnel, equipment, or facilities without the prior written approval of the Director;
- c) Assistant coaches at the University of Idaho are given priority when the Coach or the private enterprise selects coaches to participate;
- d) The Coach complies with all NCAA (NAIA), Conference, and University of Idaho rules and regulations related, directly or indirectly, to the operation of summer youth camps;
- e) The Coach or the private enterprise enters into a contract with University of Idaho and Sodexo for all campus goods and services required by the camp.
- f) The Coach or private enterprise pays for use of University of Idaho facilities.
- g) Within thirty days of the last day of the summer youth camp(s), Coach shall submit to the Director a preliminary "Camp Summary Sheet" containing financial and other information related to the operation of the camp. Within ninety days of the last day of the summer youth camp(s), Coach shall submit to Director a final accounting and "Camp Summary Sheet." A copy of the "Camp Summary Sheet" is attached to this Agreement as an exhibit.
- h) The Coach or the private enterprise shall provide proof of liability insurance as follows: (1) liability coverage: spectator and staff--\$1 million; (2) catastrophic coverage: camper and staff--\$1 million maximum coverage with \$100 deductible;

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- i) To the extent permitted by law, the Coach or the private enterprise shall defend and indemnify the University of Idaho against any claims, damages, or liabilities arising out of the operation of the summer youth camp(s)
  
- j) All employees of the summer youth camp(s) shall be employees of the Coach or the private enterprise and not the University of Idaho while engaged in camp activities. The Coach and all other University of Idaho employees involved in the operation of the camp(s) shall be on annual leave status or leave without pay during the days the camp is in operation. The Coach or private enterprise shall provide workers' compensation insurance in accordance with Idaho law and comply in all respects with all federal and state wage and hour laws

In the event of termination of this Agreement, suspension, or reassignment, University of Idaho shall not be under any obligation to permit a summer youth camp to be held by the Coach after the effective date of such termination, suspension, or reassignment, and the University of Idaho shall be released from all obligations relating thereto.

3.2.9 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.

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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**. 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.

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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 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

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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;
- 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,

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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 or until Coach obtains reasonably comparable employment, whichever occurs first, provided however, in the event Coach obtains lesser employment after such termination, then the amount of compensation the University pays as liquidated damages will be adjusted and reduced by the amount of compensation paid Coach as a result of such lesser employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to Coach under the lesser employment, then subtracting from this adjusted gross compensation deductions according to law. In addition, Coach will be entitled to continue his health insurance plan

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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 or any other employment providing Coach with a reasonably comparable health plan and group life insurance, 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, or provided the opportunity to consult with, 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.

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 March 23, 2009, the sum of \$300,000.00; (b) if the Agreement is terminated between March 24, 2009 and March 23, 2010 inclusive, the sum of \$200,000.00; (c) if the Agreement is terminated between March 24, 2010 and March 23, 2011 inclusive, the sum of \$100,000.00; (d) if the Agreement is terminated between March 24, 2011 and March 23, 2012 inclusive, the sum of \$50,000; (e) if the Agreement is terminated between March 24, 2012 and March 23, 2013 inclusive, the sum of \$0. 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.

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5.3.4 The parties have both been represented by, or provided the opportunity to consult with, 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 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.

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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 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.



**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**APRIL 17-18, 2008**

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Any notice shall be deemed to have been given on the earlier of: (a) actual delivery or refusal to accept delivery, (b) the date of mailing by certified mail, or (c) the day facsimile delivery is verified. Actual notice, however and from whomever received, shall always be effective.

6.11 Headings. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation hereof.

6.12 Binding Effect. This Agreement is for the benefit only of the parties hereto and shall inure to the benefit of and bind the parties and their respective heirs, legal representatives, successors and assigns.

6.13 Non-Use of Names and Trademarks. The Coach shall not, without the University's prior written consent in each case, use any name, trade name, trademark, or other designation of the University (including contraction, abbreviation or simulation), except in the course and scope of his official University duties.

6.14 No Third Party Beneficiaries. There are no intended or unintended third party beneficiaries to this Agreement.

6.15 Entire Agreement; Amendments. This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements and understandings with respect to the same subject matter. No amendment or modification of this Agreement shall be effective unless in writing, signed by both parties, and approved by University's Board of Regents.

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**

\_\_\_\_\_  
Timothy White, President      Date

\_\_\_\_\_  
Don Verlin                      Date

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## EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between the University of Idaho (University), and Don Verlin (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 shall cease.

### ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of five (5) years, commencing on March 24, 2008, and terminating, without further notice to Coach, on March 23, 2013, 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.

## 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 as follows:
  - i. From March 24, 2008 through March 23, 2009:  
\$117,000~~of \$\_\_\_\_\_~~ per year;
  - ii. From March 24, 2009 through March 23, 2010:  
\$124,820.80
  - iii. From March 24, 2011 through March 23, 2011:  
\$132,808.
  - iv. From March 24, 2011 through March 23, 2012:  
\$140,816.00
  - v. From March 24, 2012 through March 23, 2013:  
\$148,824.

The above salary amounts are~~year,~~ payable in biweekly installments in accordance with normal University procedures. ~~The (College) procedures, and such~~ salary increases in paragraphs ii, iii, and iv are expressly contingent upon the following: (1) academic achievement and behavior of Team members, as described in Paragraph 3.2.3 of this Agreement; (2) as may be determined appropriate behavior by, and supervision of, all assistant coaches, as determined by the Director; (3) compliance with the University's financial stewardship policies as set forth in University's Administrative Procedures Manual Chapter 25; and (4) approval by the ~~and~~ President, in the President's sole discretion. ~~and approved by the University (College)'s Board of (Regents or Trustees) \_\_\_\_\_;~~

- 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.

### 3.2 Supplemental Compensation

3.2.1. Each year the Team is the conference champion or co-champion or becomes eligible for the NCAA tournament pursuant to NCAA Division I guidelines, 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 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 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 the ~~(national rankings, such as final ESPN/USA Today coaches~~ poll of intercollegiate men's basketball ~~Division IA football~~ 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 (1/13) ~~\_\_\_\_\_ (amount or computation) \_\_\_\_\_~~ 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 (College) shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

~~3.2.4 3.2.3~~ ~~\_\_\_\_\_~~ Each year Coach shall be eligible to receive supplemental compensation ~~in an amount up to \_\_\_\_\_ (amount or computation) \_\_\_\_\_~~ based on the academic achievement and behavior of Team members if. ~~The determination of whether Coach will receive such supplemental compensation and the Team's cumulative APR ranks nationally within timing of the applicable sport above~~ payment(s) shall be at the 50th percentile 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 follows:

- National rank within sport
- 50th - 60th % = \$2,000
- 60th - 70th % = \$3,000
- 70th - 80th % = \$4,000
- 80th % or above = \$5,000

~~scholarships, designation as Academic All-American, and conference academic recognition; progress toward graduation for all athletes, but particularly those who~~

~~entered the University (College) as academically at-risk students; the conduct of Team members on the University (College) campus, at authorized University (College) 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 or Trustees)~~ as a document available to the public under the Idaho Public Records Act.

~~3.2.4 Each year Coach shall be eligible to receive supplemental compensation in an amount up to (amount or computation) based on the overall development of the intercollegiate (men's/women's) (Sport) program; ticket sales; fundraising; outreach by Coach to various constituency groups, including University (College) 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 (amount or computation)~~ 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 a 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 later. This sum shall be paid (terms or conditions of 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 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 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 for 14 victories; an additional \$5,000 for 17 victories; and an additional \$5,000 for 20 victories. The victories will include contests in both non-conference and conference competition. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.7 Each year gate receipts for men's basketball exceed \$35,000, 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 20% of the gate receipts that exceed \$35,000 and 25% of the gate receipts that exceed \$50,000. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

~~3.2.8(SUMMER CAMP OPERATED BY UNIVERSITY (COLLEGE))~~  
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 ~~(College)'s football~~ 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 ~~(College)'s summer football~~ camps, ~~the University (College) shall pay Coach (amount) per year as supplemental compensation during each year of his employment as head (Sport) coach at the~~ remaining income from the youth basketball camps, less \$500, after all claims, insurance, and expenses of such camps have been ~~University (College). This amount shall be paid. (terms of payment)~~.

Alternatively, in the event the University notifies Coach, in writing that it does not intend to operate youth basketball camps for a particular period of time during the term of this Agreement, then, during such time period, Coach shall be permitted to operate youth basketball camps on the University's campus and using its facilities under the following terms and conditions:

~~(SUMMER CAMP OPERATED BY COACH) Coach may operate a summer youth (Sport) camp at the University (College) under the following conditions:~~

- a) The summer youth camp operation reflects positively on the University of Idaho and the Department;
- b) The summer youth camp is operated by Coach directly or through a private enterprise owned and managed by Coach. The Coach shall not use University of Idaho personnel,

equipment, or facilities without the prior written approval of the Director;

- c) Assistant coaches at the University of Idaho are given priority when the Coach or the private enterprise selects coaches to participate;
- d) The Coach complies with all NCAA (NAIA), Conference, and University of Idaho rules and regulations related, directly or indirectly, to the operation of summer youth camps;
- e) The Coach or the private enterprise enters into a contract with University of Idaho and Sodexo for all campus goods and services required by the camp.
- f) The Coach or private enterprise pays for use of University of Idaho facilities.
- g) Within thirty days of the last day of the summer youth camp(s), Coach shall submit to the Director a preliminary "Camp Summary Sheet" containing financial and other information related to the operation of the camp. Within ninety days of the last day of the summer youth camp(s), Coach shall submit to Director a final accounting and "Camp Summary Sheet." A copy of the "Camp Summary Sheet" is attached to this Agreement as an exhibit.
- h) The Coach or the private enterprise shall provide proof of liability insurance as follows: (1) liability coverage: spectator and staff--\$1 million; (2) catastrophic coverage: camper and staff--\$1 million maximum coverage with \$100 deductible;
- i) To the extent permitted by law, the Coach or the private enterprise shall defend and indemnify the University of Idaho against any claims, damages, or liabilities arising out of the operation of the summer youth camp(s)
- j) All employees of the summer youth camp(s) shall be employees of the Coach or the private enterprise and not the University of Idaho while engaged in camp activities. The Coach and all other University of Idaho employees involved in the operation of the camp(s) shall be on annual leave status or leave without pay during the days the camp is in operation. The Coach or private enterprise shall provide workers' compensation insurance in accordance with Idaho

law and comply in all respects with all federal and state wage and hour laws

In the event of termination of this Agreement, suspension, or reassignment, University of Idaho shall not be under any obligation to permit a summer youth camp to be held by the Coach after the effective date of such termination, suspension, or reassignment, and the University of Idaho shall be released from all obligations relating thereto.

~~3.2.9~~~~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**. 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 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.

4.64.7 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;
- 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 or until Coach obtains reasonably comparable employment, whichever occurs first, provided however, in the event Coach obtains lesser employment after such termination, then the amount of compensation the University pays as liquidated damages will be adjusted and reduced by the amount of compensation paid Coach as a result of such lesser employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to Coach under the lesser employment, then subtracting from this adjusted gross compensation deductions according to law.~~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 or any other employment providing Coach with a reasonably comparable health plan and group life insurance, 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, or provided the opportunity to consult with, 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.

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 March 23, 2009, the sum of \$300,000.00; ~~\$30,000.00~~; (b) if the Agreement is terminated between March 24, 2009 and March 23, 2010 inclusive, the sum of \$200,000.00; ~~\$20,000.00~~; (c) if the Agreement is terminated between March 24, 2010 and March 23, 2011 inclusive, the sum of \$100,000.00; (d) if the Agreement is terminated between March 24, 2011 and March 23, 2012 inclusive, the sum of \$50,000; (e) if the Agreement is terminated between March 24, 2012 and March 23, 2013 inclusive, the sum of \$0. ~~\$10,000.00~~. 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, or provided the opportunity to consult with, 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 ~~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 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~~~~5.7~~ 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~~ ~~5.8~~ 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 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.



6.13 Non-Use of Names and Trademarks. The Coach shall not, without the University's prior written consent in each case, use any name, trade name, trademark, or other designation of the University (including contraction, abbreviation or simulation), except in the course and scope of his official University duties.

6.14 No Third Party Beneficiaries. There are no intended or unintended third party beneficiaries to this Agreement.

6.15 Entire Agreement; Amendments. This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements and understandings with respect to the same subject matter. No amendment or modification of this Agreement shall be effective unless in writing, signed by both parties, and approved by University's Board of Regents.

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**

\_\_\_\_\_  
Timothy White, President      Date

\_\_\_\_\_  
Don Verlin                      Date

**BUSINESS AFFAIRS AND HUMAN RESOURCES  
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**ATTACHMENT 3**

**DON VERLIN – MEN’S BASKETBALL COACH  
MULTI-YEAR CONTRACT – SUBSTANTIVE MODIFICATIONS FROM SBOE FORM**

<b>Model Contract Section</b>	<b>UI Contract Section</b>	<b>Modification/Justification for Modification</b>
3.1.1 Regular Compensation	3.1.1 Regular Compensation	Annual increases for the term of the contract have been negotiated. Language makes increases contingent upon team academics and behavior, supervision and behavior of assistant coaches, compliance with University stewardship policies and approval by the President in his sole discretion.
3.2.2 Supplemental Compensation	3.2.2 Supplemental Compensation	Allows for supplemental compensation if team is ranked in top 25 of any published national poll. Same term as was approved for prior BB coach
3.2.3 Supplemental Compensation	3.2.4 Supplemental Compensation	Allows for supplemental compensation if team’s cumulative APR ranks at certain levels nationally. This language establishes a more objective standard for academic achievement and has been used in past contracts approved by the Board.
3.2.5 Supplemental Compensation	3.2.5 Supplemental Compensation	Language calls for media compensation to be paid ½ at the beginning of the regular season and ½ at the time set out in the Board form contract. This recognizes that much media work has been done by the coach prior to commencement of the season, and at the same time retains ½ of the payment as motivation for completing the season.
NEW	3.2.6 Supplemental Compensation	Language allows for supplemental compensation based on number of team victories in the season. Term was in prior coach contract.
NEW	3.2.7 Supplemental Compensation	Language allows for supplemental compensation based on certain gate receipt goals
5.2.2 University Termination for Convenience	5.2.2 University Termination for Convenience	Language allows the University to offset salary received by Coach for lesser employment obtained after University termination for convenience. Prior language would allow coach to take lesser employment and continue to receive full termination payment.
5.2.3 Representation by Counsel	5.2.3 Representation by Counsel	Language clarifies that the parties have been represented, <u>or provided the opportunity to consult with</u> , counsel during the negotiations. The underlined language is new and recognizes the fact that we can not require candidates to retain counsel.
5.3.4 Representation by Counsel	5.3.4 Representation by Counsel	Same as 5.2.3 above
5.3.5 Coach Termination for Convenience – Rights to payments	5.3.5 Coach Termination for Convenience – Rights to payments	Language replaces term “to the extent permitted by law” with clearer standard of rights to payment that have “vested pursuant to the terms of the agreement.”

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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

Subsection: H. Policies Regarding Coaching Personnel and Athletic Directors

April 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.

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**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
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**UNIVERSITY OF IDAHO**

**SUBJECT**

University of Idaho request for approval of the settlement agreement discussed in executive session

**APPLICABLE STATUTE, RULE, OR POLICY**

Idaho State Board of Education Governing Policies & Procedures, Section V.I.7. Sections 67-2345(d), (e) and (f), Idaho Code.

**DISCUSSION**

University of Idaho requests approval of the settlement agreement consistent with the terms discussed in executive session.

**IMPACT**

Approval of the settlement will bring finality to this matter.

**STAFF COMMENTS AND RECOMMENDATIONS**

Staff has no comment on this item.

**BOARD ACTION**

A motion to approve the settlement of a personnel matter and to authorize the University of Idaho to sign all necessary settlement documents.

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

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

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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**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**

**IDAHO CODE**

§ 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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**BOISE STATE UNIVERSITY**

**SUBJECT**

Salary increase for the Women's Basketball Coach

**APPLICABLE STATUTE, RULE, OR POLICY**

Idaho State Board of Education Governing Policies & Procedures Section II. B.3.c.

**DISCUSSION**

Boise State requests approval to increase the salary for the women's basketball coach, Gordon Presnell. The increase is merited due to the tremendous success of the program. Coach Presnell has led the team to its first back-to-back 20 win seasons, conference championship and post-season victory in the program's history.

**IMPACT**

The total \$45,100 increase is subject to Board approval. Most of the increase (\$40,000) will be paid from athletics local and appropriated funds, but will not increase the total appropriated funds approved for athletics. \$5,100 of the increase will be paid directly from the media contracts.

**STAFF COMMENTS AND RECOMMENDATIONS**

This is a permanent increase to the coach's contract, and under the existing contract such salary increases may be determined appropriate by the Athletic Director and institution President and approved by the Board.

**BOARD ACTION**

A motion to approve the salary increase requested for Boise State University's women's basketball coach, Gordon Presnell.

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

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
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Position Title	Women's Head Basketball Coach
FTE	1.0 FTE
Term of Appointment	5 years (no change to term)
Effective Date	April 1, 2008 (increase only)
Salary Range	\$180,000
Funding Source	Appropriated Funds - \$88,238.80 Media Contracts - \$5,100 Local Funds - \$86,661.20
Area/Department of Assignment	Athletics
Duties and Responsibilities	Manage and supervise the Team and perform other duties in the University's athletic program as the Director may assign.
Justification of position	The increase is merited due to the tremendous success of the program. Coach Presnell has lead the team to its first back-to-back 20 win season, conference championship and post season victory in the program's history. As a result of this success, next year most of the team will be back, with four red-shirt eligible for play. Additionally, the proposed increase is consistent with market increases in coaches' salaries. The terms of the Coach's employment contract will not change with the salary increase. However, the current contract requires Board approval for any annual salary increase.

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

**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) Any permanent new position (including any reactivated position that requires a new “set-up” action); 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.

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**BOISE STATE UNIVERSITY**

**SUBJECT**

Closure of the Larry Selland College of Applied Technology (“Selland College”), discontinue all of its courses and programs, and lay off of all faculty and staff

**APPLICABLE STATUTE, RULE OR POLICY**

Idaho Administrative Procedures Act (“IDAPA”) 55.01.02 — Rules Governing Postsecondary Program Reduction or Termination.  
Idaho State Board of Education Policies & Procedures, Sections II.N. and III.G.

**BACKGROUND**

On February 29, 2008, the Board signed a non-binding memorandum of understanding (“MOU”) with the College of Western Idaho (“CWI”). The MOU preliminarily approved a transfer of BSU’s professional-technical programs to CWI scheduled for July 1, 2009. The MOU also stated the intent to transfer the Canyon County Center and 100 acres of the BSU West Campus to the College of Western Idaho. Further, at the same Board meeting, the Board approved the designation of CWI as the professional-technical college for Region III (pursuant to Idaho Code §33-2201 et. seq.) instead of BSU’s Selland College, pending final recommendation of SDPTE.

Closing the Selland College will result in the closure of all programs and courses offered by the College. It is currently CWI’s stated, but non-binding, intent to commence offering all such closed programs and courses and hire the effected employees.

Finally, the change in facility ownership means that certain BSU employees, who do not work for the Selland College but perform functions attendant to the Selland College facilities or operations, will also be laid off as part of the transition and closure of Selland College functions.

The effective date of this action will be June 27, 2009.

**DISCUSSION**

Boise State University, with the concurrence of the State Division of Professional-Technical Education (SDPTE), requests approval to close the Larry Selland College of Applied Technology (“Selland College”), discontinue all of its courses and programs, and lay off all faculty and staff working in, and attendant to, the Selland College.

Because the Board intends to transfer BSU’s professional-technical programs to CWI, BSU will lose all state and federal funding related to these educational pursuits. As a result of the end of the funding for such programs, BSU will technically be placed in a position of a “financial exigency” under IDAPA

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55.01.02.101.06 and Board Policies & Procedures II.N.1. Furthermore, the Board's designation of CWI as the regional technical college means that the Selland College no longer should provide that function. As such, the Board can find that offering professional-technical programs at BSU and CWI would be an unreasonable duplication of effort and that there is a reduced emphasis on training in the occupation for which these programs prepare students at Boise State since the training and education will be provided elsewhere.

These findings meet the requirements as provided for by IDAPA 55.01.02.101.05 (see *also* Board Policies & Procedures III.G.9(c) and II.N). Therefore, Boise State University and SDPTE seek:

- (1) to have the Board determine that a financial exigency (inadequate finances) and/or a reduced emphasis on regional professional-technical programs exists creating inadequate need for the Boise State Selland College programs; and
- (2) that the Board grant permission to close Selland College, discontinue its courses and programs, and lay off (or not renew the contracts for) its faculty and staff, and attendant personnel, effective June 27, 2009.

**IMPACT**

Since the Board has preliminarily approved the transfer of BSU's professional-technical programs and CWI has expressed its verbal intent to hire most, if not all, of the affected faculty and staff, the employee lay off impact of this decision should not be significant. However, because the Board's MOU is non-binding and CWI has not yet contracted to hire any of the displaced workers, the worst case scenario could result in permanent layoffs of all employees and/or make the programs currently offered by Selland College unavailable to students for a period of time. Nevertheless, since BSU, CWI, and the Board will coordinate their good faith efforts, the anticipated negative impact to BSU students and employees will be minimized.

**STAFF COMMENTS AND RECOMMENDATIONS**

Staff recommends approval.

**BOARD ACTION**

A motion that the Board finds that the requisite conditions exist that justify the closing of Boise State University's Selland College, the discontinuance of all programs and courses related thereto, and that Boise State shall non-renew the contracts of, or lay off, the Selland College's entire faculty and staff (and other attendant staff of the University) effective June 27, 2009.

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

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

**IDAPA 55 TITLE 01 CHAPTER 02**

**55.01.02 - RULES GOVERNING POSTSECONDARY PROGRAM REDUCTION OR TERMINATION**

**000.LEGAL AUTHORITY.** The State Board of Education is designated as the State Board for Professional-Technical Education and is responsible to execute the laws of the state of Idaho relative to professional-technical education, administer state and federal funds, and through the administrator of the State Division of Professional-Technical Education, coordinate all efforts in professional-technical education (Sections 33-2202 through 33-2212, Idaho Code). (4-5-00)

**001.TITLE AND SCOPE. 01. Title.** These rules shall be known as the IDAPA 55.01.02, “Rules Governing Postsecondary Program Reduction Or Termination”. (4-5-00) **02. Scope.** These rules serve the administration of Professional-Technical Education in Idaho and define the duties of the State Division of Professional-Technical Education. (4-5-00)

**002.WRITTEN INTERPRETATIONS.** Written interpretations of these rules, if any, are on file at the office of the State Division of Professional-Technical Education. (4-5-00)

**003.ADMINISTRATIVE APPEALS.** All appeals under these rules shall be conducted pursuant to the procedures set forth by the State Board of Professional-Technical Education. (4-5-00)

**004.DEFINITIONS. 01. ICPS.** Means Idaho Classified Personnel System. (4-5-00) **02. SDPTE.** Means State Division of Professional-Technical Education. (4-5-00) **03. SBPTE.** Means State Board for Professional-Technical Education. (4-5-00) **04. Institution.** Means one (1) of the six (6) postsecondary technical colleges. (4-5-00)

**005. -- 099.(RESERVED).**

**100.STATEMENT OF PURPOSE.** IDAPA 55.01.02, “Rules Governing Postsecondary Program Reduction Or Termination,” specifically applies to reductions or terminations in postsecondary professional-technical education programs, and to the extent there is a conflict between IDAPA 55.01.02, “Rules Governing Postsecondary Program Reduction Or Termination,” and the Administrative Rules of the Board of Education IDAPA 08.01.02, “Personnel Rules of the State Board of Education,” IDAPA 55.01.02, “Rules Governing Postsecondary Program Reduction Or Termination,” supersedes and shall be given priority over said Administrative Rules of the State Board of Education. (4-5-00)

**101.CONDITIONS FOR REDUCTION OR TERMINATION.**

The Idaho State Board of Professional-Technical Education sets forth the following conditions and procedures for the reduction or termination of postsecondary professional-technical programs. Any postsecondary professional-technical education program is subject to reduction or termination when the SBPTE finds that one (1) or more of the following conditions exist. (4-5-00) **01. Inadequate Job Opportunities.** Adequate job opportunities no longer exist in the occupation of which the training is provided (as exhibited by local, regional and statewide employment data) to justify continued operation of a program at its current level.

**02. Inadequate Student Enrollment.** Student enrollment is below an acceptable standard for two (2) consecutive years. (Standard to be predetermined at the local level based on facilities requirements, equipment needs, and an acceptable student/teacher ratio.) Seventy-five percent (75%) of capacity is considered a generally acceptable standard. (4-5-00) **03. Inadequate Job Placement.** Job placement in the occupation for which training is provided is below seventy-five percent (75%) of completers available for employment for two (2) consecutive years. Job placement will be assessed through statewide follow-up system. (4-5-00) **04. Inadequate Completion Rate.** For two (2) consecutive years, Associate of Applied Science degree programs/options and certificate programs/options have less than a fifty percent (50%) completion rate. (4-5-00) **05. Inadequate Need Based on Assessment.** Current statewide Needs Assessment/Strategic Plan places reduced emphasis on training in the occupation for which the program prepares students. (4-5-00) **06. Inadequate Finances.** A condition of financial exigency as determined by the SBPTE prevents the continuation of a quality program at its current level of operation. (4-5-00)

**102.PROCEDURES.** The following procedures will govern the reduction or termination of postsecondary professional-technical programs. (4-5-00) **01. Notice of Initiation.** (4-5-00) **a.** Formal notice of initiation of program review proceedings will be provided to the institution’s president/designee by the SDPTE; or (4-5-00) **b.**

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When the proceedings are initiated by the institution, the institution's president/designee will notify the SDPTE. (4-5-00) **02. Official Documentation.** Official documentation that one (1) or more of the conditions stated in Section 101 exists. This documentation will be compiled through the joint efforts of the institution and the SDPTE. (4-5-00) **03. Official Recommendation.** Official recommendation for program reduction or termination will be presented by the SDPTE to the SBPTE for final action. (4-5-00) **04. Notification of Employees.** The postsecondary institution will notify the employees affected by the program reduction or termination of the SBPTE's action. (4-5-00) **05. Vacated Positions.** The vacated position(s) will remain with the postsecondary institution if appropriate reallocation is justified to the SBPTE. Positions left vacated more than twelve (12) months are subject to reallocation within the professional-technical college system or elimination. (4-5-00) **06. Transfer of Programs.** Upon written request by the postsecondary institution, assessment will be made by the SDPTE to determine the feasibility of transferring the program, position(s), equipment and such, affected by the reduction or termination to another postsecondary institution. (4-5-00)

**103.EFFECTIVE DATE.** The actual program reduction or termination will take place upon completion of the school year in which the reduction or termination was approved, or upon completion of the program by students enrolled in the program, whichever is later, unless provision can be made for transfer of such students to a mutually acceptable program. (4-5-00)

**104. -- 199.(RESERVED).**

**200.REDUCTIONS IN FORCE.** The institution, after consultation with professional-technical faculty, professional staff, and classified personnel, must prepare and recommend to the SDPTE a plan consisting of various alternatives to implement program reduction or termination and staff reduction procedures. When developing this plan, consideration must be given to the necessity and manner of reducing the employment force and the criteria for identifying the employees who are to be laid off. The SDPTE must consider and approve a program to implement its decision prior to the effective date of any layoffs. Reductions in force will be done equitably, in good faith, and in a systematic manner. The institution may establish a committee to advise the president/designee on the need for program reduction or termination and the possible remedies therefore. (4-5-00)

**201.(RESERVED).**

**202.CRITERIA.** In making any staff reduction recommendation, the institution must utilize as the first criterion the preservation of the quality and effectiveness of its programs. (4-5-00) **01. Retained Employees.** Those employees who, in the sole and absolute discretion of the institution president, are determined to be of key importance to the specific program will be retained in preference to other employees, regardless of their status. (4-5-00) **02. Programs.** Programs, for the purposes of Section 202, include professional-technical, academic, non-instructional, maintenance, administrative, and other support areas. (4-5-00) **03. Other Criteria.** Other criteria that must be considered include: (4-5-00) **a. Tenure.** (4-5-00) **b. Rank.** (4-5-00) **c. Time in rank.** (4-5-00) **d. Length of service.** (4-5-00) **e. Field of specialization.** (4-5-00) **f. Maintenance of necessary programs or services.** (4-5-00) **g. Maintenance of affirmative action programs.** (4-5-00) **h. Quality of service and work.** (4-5-00)

**203. -- 299.(RESERVED).**

**300.NOTICE TO EMPLOYEES.** Any layoff may be of severe economic and personal loss to the employee. Therefore, within five (5) working days of SBPTE program reduction approval, the institution must give notice in writing to employees who are affected by a program reduction or termination. (4-5-00)

**301.FORM OF NOTICE.** The notice must include: (4-5-00) **01. Date.** The effective date of layoff; (4-5-00) **02. Reasons.** A statement of the reasons for the action to eliminate or reduce the size of the program; (4-5-00) **03. Criteria.** The basis, the procedures, and the criteria used to layoff an employee; (4-5-00)

**04. Appeal.** Any opportunity for appeal of the initial recommendation and access to appropriate documentation; and (4-5-00) **05. Reinstatement.** The reinstatement rights of the employee. (4-5-00)

**302.TIME OF NOTICE.** The institution will make every effort to give as much notice as practical to each affected employee in advance of the effective date of the layoff. The SBPTE requires the following minimum written notice of layoff. (4-5-00) **01. Classified Employees.** To employees subject to the Idaho Classified Personnel System (ICPS) who shall be subject to the requirements of the ICPS, but in no case not less than sixty (60) calendar days before the effective date of layoff. (4-5-00) **02. Exempt Employees.** To exempt employees serving under a contract of employment for a fixed term, not less than sixty (60) calendar days before the effective date of layoff. (4-5-00) **03. Faculty Members.** To faculty members occupying faculty positions, a notice of the effective date of the layoff being not less than sixty (60) calendar days prior to the end of the semester in which the reduction or termination is

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declared. (4-5-00) **04. Timelines.** If notice is not given within the timelines of Section 300 or Section 302, then such effective date shall be no sooner than sixty (60) after the actual notice is given. (4-5-00)

**303.RELOCATION.** At the time it is preparing and implementing a program reduction or termination the institution shall, to the extent practicable, make a good faith effort to relocate any employee to be laid off in a suitable vacant position within the institution for which that employee is fully qualified. Except when required by the rules of the Division of Human Resources applicable to employees subject to the ICPS, an employee to be laid off has no right to bump another employee from a position to maintain employment. This good faith effort to relocate an employee need not extend beyond the effective date of the layoff, but the employee does have the layoff roster rights provided herein. (4-5-00)

**304. -- 399.(RESERVED).**

**400.APEAL RIGHTS OF CLASSIFIED EMPLOYEES.** The decision of the institution's president is final and not appealable to the SBPTE. (4-5-00)

**401.APEAL RIGHTS OF NON-CLASSIFIED EMPLOYEES.** A reduction in force of employees serving under a contract of employment for a fixed term will be accomplished by non-renewal of the contract of employment rather than by layoff during the term of employment. Non-renewal is not appealable within the institution nor is it appealable to the SBPTE. If an institution determines that the reduction in force requires that an employee serving under a contract of employment for a fixed term be laid off during the term of employment, that employee is entitled to use the institution's appeal procedures. (4-5-00) **01. Notification.** The employee must notify the president/designee of the institution in writing, within fifteen (15) days of the receipt of the notice of layoff, of his/her intent to use the institution's appeal procedure. (4-5-00) **02. Decision.** The decision of the president following the appeal procedure is final and not appealable to the SBPTE. (4-5-00) **03. Effective Date.** Use of the internal appeal procedure does not delay the effective date of layoff. (4-5-00)

**402.STANDARD OF REVIEW.**

The sole basis on which to contest a layoff of employees subject to the ICPS is compliance with the rules of the Division of Human Resources, where applicable, and compliance with the rules and the program for reduction in force approved by the SBPTE. The sole basis to contest a layoff of faculty members and non-faculty/non-classified employees serving under a contract of employment for a fixed term is compliance with the SBPTE rules and the program for reduction in force approved by the SBPTE. (4-5-00)

**403.LAYOFF ROSTER FOR CLASSIFIED EMPLOYEES.** When laying off employees subject to the ICPS, the institution must prepare and distribute a listing of retention point scores of employees and classes to be affected by the layoff as required by the rules of the Division of Human Resources. A classified employee reinstated from a layoff roster will be paid at a pay grade and step consistent with the rules of the IPC in effect at the time of reinstatement. (4-5-00)

**404.BENEFITS.** An employee who is laid off may continue to contribute toward and receive the benefits of any state health insurance program if, and to the extent, that the laws, rules, regulations, policies, and procedures governing the administration of such insurance program so permit. (4-5-00)

**405.ACCRUED LEAVE.** An employee who has been laid off and who accepts reemployment must be credited with any sick leave which the employee had accrued as of the date of layoff, and with any annual leave which the employee had accrued as of the date of layoff and for which the employee has not received payment. (4-5-00)

**406.REINSTATEMENT RIGHTS FOR TENURED FACULTY.** In cases of layoff of tenured faculty members occupying faculty positions, the position concerned may not be filled by replacement within a period of three (3) years from the effective date of the layoff unless the tenured faculty member has been offered a return to employment in that position and has not accepted the offer within thirty (30) calendar days after the offer was extended. (4-5-00) **01. Obligation.** If an offer of reinstatement is not accepted, the tenured faculty member's name may be deleted from the reinstatement list, and, if so deleted, the institution and the SBPTE have no further obligation to the faculty member. (4-5-00) **02. Benefits.** A tenured faculty member who is laid off may continue to contribute toward and receive benefits of any state health insurance program if, and to the extent that, the laws, rules, regulations, policies, and procedures governing the administration of such insurance program so permit. (4-5-00) **03. Reemployment.** A tenured member of the faculty who has been laid off and who accepts reemployment at the institution will resume tenure and the rank held at the time of layoff, be credited with any sick leave accrued as of the date of layoff, be paid a salary commensurate with the rank and length of previous service, and be credited with any annual leave which the employee has accrued as of the date of layoff and for which the employee has not received payment. (4-5-00)

**407.REINSTATEMENT RIGHTS FOR NON-TENURED FACULTY AND NON-CLASSIFIED EMPLOYEES.**

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In cases of layoff of non-tenured faculty members occupying faculty positions, and non-classified employees, the position concerned may not be filled by replacement within a period of one (1) year from the effective date of the layoff unless the employee has been offered a return to employment in that position and the employee has not accepted the offer within thirty (30) calendar days after the offer was extended. (4-5-00) **01. Obligation.** If an offer of reinstatement is not accepted, the employee's name may be deleted from the reinstatement list and, if so deleted, the institution and the SBPTE have no further obligation to the employee. (4-5-00) **02. Benefits.** A non-tenured faculty member, or a non-classified employee who is laid off may continue to contribute toward and receive the benefits of any state health insurance program if, and to the extent that, the laws, rules, regulations, policies, and procedures governing the administration of such insurance program so permit. (4-5-00) **03. Non-Tenured Faculty.** A non-tenured member of the faculty who has been laid off and who accepts reemployment at the institution will resume the rank (if applicable) held at the time of layoff, be credited with any sick leave accrued as of the date of layoff, be paid a salary commensurate with the rank and length of previous service, and will be credited with any annual leave which the employee had accrued as of the date of layoff and for which the employee has not received payment. (4-5-00) **04. Non-Classified Employee.** A non-classified employee who has been laid off and who accepts reemployment at the institution will be credited with any sick leave the employee had accrued as of the date of layoff, paid a salary commensurate with the length of previous service, and credited with any annual leave which the employee had accrued as of the date of layoff and for which the employee has not received payment. (4-5-00)

**408. -- 999.(RESERVED).**

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

Idaho State Board of Education

**GOVERNING POLICIES AND PROCEDURES**

SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES

Subsection: N. Staff Reduction Procedures – All Employees

April 2003

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**N. Financial Exigency Procedures – All Employees**

1. Financial Exigency

The Board recognizes that in order to discharge its responsibilities for the agencies, institutions, or school under its governance, it may become necessary to curtail, modify, or eliminate some of the programs of the agencies, institutions or school due to unfavorable economic conditions. The Board further recognizes that it must dedicate its resources to the achievement of the purposes and goals of its agencies, institutions or school. As used here, “financial exigency” means a demonstrably bona fide financial crisis that adversely affects an agency, institution or school as a whole, or one (1) or more programs, or other distinct units. A financial exigency exists only upon Board declaration, and the responsibility and authority to make such a declaration rests solely with the Board. The realities of the legislative appropriation process, the state revenue collection process, the possibility of budget hold-backs via executive order and the subsequent analysis needed before the Board declares a financial exigency may allow little time for official notice of a declaration of a financial exigency and may require that the decision to declare a financial exigency be based on estimated revenues, rather than on actual revenues. The Board must take action by written resolution setting forth the basis for its decision to declare a financial exigency, after notice and hearing, at a regular or special meeting of the Board.

This subsection N is designed to authorize responses to a declared financial exigency including: (1) the layoff of non-classified contract employees, tenured faculty, and non-tenured faculty, and classified employees during the term of their contract of employment; (2) employment actions other than layoffs that are designed to reduce budgetary expenditures; (3) the closure, relocation, or discontinuance of any programs, units, or activities; or (4) any combination thereof.

This subsection N does not apply to the organization or reorganization of the institutions, agencies, or school under the governance of the Board, nor does it limit the authority delegated by the Board to the chief executive officers to organize and reorganize the institutions, agencies, or school. Organizational structure, duty assignments, FTE count, place of work, shift placement, salaries, work hours, benefit determination and reductions in force and all similar and related work place decisions are the prerogative of the chief executive officers, subject to the reserved

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authority of the Board where applicable. In addition, this subsection N is not applicable to the following situations:

- a. When a reduction in force occurs pursuant to, and for those employees subject to, the State Board for Professional-Technical Education's administrative rules governing post-secondary reduction or termination (IDAPA 55.01.02), which excludes community colleges.
  - b. When a reduction in force occurs where the reductions are made via the non-renewal process for non-classified contract staff and non-tenured faculty.
  - c. When a reduction in force occurs pursuant to Board policies (Section III. G.) for program consolidation, relocation or discontinuance not resulting from financial exigency. Program closure, relocation, reduction, or discontinuance pursuant to Section III.G shall not be implemented utilizing any policy or procedure in this Section II. N.
  - d. When a reduction in force affects State of Idaho classified employees using the procedures of the State Division of Human Resources or classified employees of the University of Idaho using the policies of the University of Idaho.
  - e. When a reduction in force affects non-classified at-will employees.
2. Response by an Institution, School, or Agency to a Declared Financial Exigency
- a. After active consultation with employees, including faculty, professional staffs, and classified personnel, the Chief Executive Officer of each agency, institution or school must prepare a plan (the "Plan") in response to the declaration of financial exigency. When developing this Plan, consideration must be given to the necessity and manner of reducing the employment force, the appropriate units or subunits to be affected, and the criteria for identifying the employees who are affected by the Plan. Once completed, the Plan must be approved by the Board. Provided, however, that implementation of the Plan and notices required to be given in the Plan may begin prior to Board approval, which approval shall then also include ratification of such actions.
  - b. Each of the institutions shall seek advice from a committee, which may include representatives of the administration, faculty, staff or students, on the state of the financial exigency and possible responses thereto.
  - c. Notwithstanding any other Board policy, order or rule, or the policies of any institution, agency, or school, all categories of employees may be laid off as a result of a Board declared financial exigency. The process used to layoff employees must be done equitably (but not necessarily uniformly), in good faith, and in a systematic manner directly related to the financial exigency.

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- d. Employment Actions Other than Layoffs. In any situation where a layoff may be made under this subsection N, an employment action other than a layoff (including but not limited to a salary reduction, a work hour reduction, a demotion, and/or administrative leave without pay) may also be instituted. Such employment action need not be uniformly applied, it need only meet the requirements of this topic 2 and topic 7 below. In determining how to implement employment actions other than a layoff, the institution shall use the same policies that apply to a financial exigency layoff. However, employees who are affected by employment actions other than layoff do not have layoff reinstatement rights.
  
- e. Program Closure, Relocation and Discontinuance. When the Plan for responding to a declared financial exigency includes the closure, relocation or discontinuance of a program, such program closure, relocation or discontinuance shall be subject only to the requirements of this subsection N and not to any other Board policy, including specifically, but not limited to, section III.G, and its related guidelines. However, arrangements should be made for enrolled students to complete affected programs in a timely manner and with minimum interruptions.
  
- f. A financial exigency layoff, employment actions other than a layoff, and program closure, relocation or discontinuance resulting from financial exigency may occur in the following manner and may be the same or may differ from one (1) agency, institution or school to another:
  - (1) By entire entity or across an entire agency, institution or school; or
  
  - (2) By subunit within an agency, institution, or school, such as, but not limited to, a college, school, academic department, administrative department, division, office, bureau, discipline, or specialty within a discipline, and such actions may also differ between subunits of the same agency, institution, school; or
  
  - (3) by any combination of the aforementioned.

3. Classified Employees

When a financial exigency results in a layoff that affects classified employees, the following shall apply:

a. State of Idaho Classified Employees

A layoff affecting employees subject to the Idaho classified personnel system will be made pursuant to the Rules of the Division of Human Resources.

b. University of Idaho Classified Employees

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A layoff affecting University of Idaho classified employees will be made pursuant to the policies of the University of Idaho. Provided, however, that University of Idaho classified employees do not have a right of appeal to the Idaho Personnel Commission nor to the Board.

4. At-Will Employees.

This section II.N does not apply to the termination of at-will employees at the institutions, agencies, or school. Such employees have no layoff rights and no right to notice, a hearing or reinstatement following termination of employment.

5. Layoff Criteria – All non-classified contract employees, non-tenured faculty and tenured faculty.
- a. In developing the Plan, the chief executive officer must utilize as the first criterion the preservation of the overall quality and effectiveness of the programs of the agency, institution or school. Consequently, those employees who are deemed to be of key importance will be retained in preference to other employees, whatever their status, at the discretion of the Chief Executive Officer. Programs, for purposes of a financial exigency layoff, include, but are not limited to, academic, non-instructional, maintenance, administrative, and other support areas. Other criteria that must be considered include, but are not limited to, tenure, rank, time in rank, length of service, field of specialization, maintenance of necessary programs or services, maintenance of affirmative action programs, and quality of service and work.
  - b. Notice of Financial Exigency Layoffs
    - (1) Form of Notice. The Board recognizes that any layoff may be a severe economic and personal loss to an employee. Therefore, and within the time frame provided in this policy, the Chief Executive Officer must give notice in writing to employees who are affected by a financial exigency layoff, which notice must include the effective date of the layoff; a statement of the basis for the Board's declaration of a financial exigency; a statement of the basis, the procedures, and the criteria used to layoff an employee; any opportunity for reconsideration or appeal, including access to appropriate documentation, and the issues that may and may not be considered; and the reinstatement rights of the employee.
    - (2) Time. Each agency, institution or school should make every reasonable effort to give as much notice as is practical, in light of the financial exigency, to each employee in advance of the effective date of the layoff. The Board requires each agency, institution or school under its governance to the following minimum time for written notice of layoff:

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- (a) Non-classified Contract Employees And Non-tenured Faculty - Not less than sixty (60) calendar days before the effective date of the layoff. Provided, however, that if under the express terms of the employee's contract the employment may be terminated on less notice, then the shorter notice provided in the contract shall apply.
  - (b) Tenured Faculty - To tenured faculty members occupying faculty positions, a notice of layoff with the effective date of layoff being at the end of the first full semester (Fall or Spring) after the financial exigency is declared.
- c. Hearing Procedures
- (1) All employees of the institutions, agencies or school who receive a notice of a financial exigency layoff have the right to appear before the Board at the meeting of the Board where the Board will take action on the Plan. Such appearance shall be governed by the Board's policies, procedures and guidelines regarding testimony before the Board. In addition, categories of employees shall have hearing rights as set forth below in this subtopic c.
  - (2) Non Tenured Faculty and Non-classified Contract Employees' Hearing Rights
    - (a) In most instances, a layoff of non-tenured faculty and non-classified employees serving under a contract of employment for a fixed term may be accomplished by non-renewal of the contract of employment rather than by layoff during the term of employment. Non-renewal after a Board declared financial exigency does not require a hearing nor is the non-renewal appeal able at the agency, institution, or school, nor is it appeal able to the Board.
    - (b) If a non-tenured faculty member occupying a permanent faculty position or a non-classified employee serving under a contract of employment for a fixed term is laid off during the term of employment due to a financial exigency, the faculty member or employee is entitled to the pre-layoff hearing procedures set forth in paragraph (4) below.
  - (3) Tenured Faculty Hearing Rights. All Tenured faculty members occupying permanent faculty positions who are laid off due to a financial exigency are entitled to the pre-layoff hearing procedures set forth in paragraph (4) below.
  - (4) Financial Exigency Layoff Hearing Procedures
    - (a) The financial exigency layoff hearing procedures at the institutions, agencies, or school must ensure a prompt and expeditious hearing that is fair and unbiased, but the hearing shall be informal. The application of evidentiary rules, questioning of witnesses (including cross-examination),

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rules concerning burden of proof, the participation of legal counsel, and similar and related attributes of more formal adjudication shall not be required. The final written recommendation of the hearing body or officer must be conveyed to the Chief Executive Officer of the institution, agency, or school who shall make a final decision. An employee may ask the Chief Executive Officer to reconsider the decision. Such a request must be filed in writing with the Chief Executive Officer within fifteen (15) days of the notice of the final decision of the institution, agency or school. The decision of the Chief Executive Officer in response to the reconsideration request is final except as modified by the Board pursuant to an appeal under Section II.M. Use of these hearing procedures does not delay the effective date of the layoff.

- (b) Grounds to Contest. The employee may contest the layoff on the following grounds:
  - (i) Whether the agency, institution or school followed the appropriate policies and procedures and the terms of the Plan;
  - (ii) Whether the layoff was made for constitutionally impermissible reasons; or
  - (iii) Whether any other improper criteria were applied.
- (c) Limitations Upon Review. The hearing body or officer will not review the Board's decision to declare a financial exigency or the funding distribution among and within the institutions, agencies or school. The decision of the Board to declare a financial exigency is at the Board's sole discretion and may not be contested by any employee in any type of hearing or appeal procedure.
- (d) Employees may request that the Board hear an appeal of the final decision of the chief executive officer as provided in Board policy section II.M.2.b. Such a request does not delay the effective date of the layoff.

## 6. Reinstatements Rights

### a. Tenured Faculty

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

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- (1) Refusal Of Reinstatement Offer. If an offer of reinstatement is not accepted, the tenured faculty member's name may be deleted from the reinstatement list, and, if so deleted, the Board has no further obligation to the faculty member.
- (2) Benefits During Layoff. A tenured faculty member who is laid off may continue to contribute toward and receive the benefits of any applicable state or University of Idaho insurance program if the laws, rules, regulations, policies, and procedures governing the administration of such insurance program so permit.
- (3) Leave Credit. A tenured member of the faculty who has been laid off and who accepts reemployment at the institution will resume tenure and the rank held at the time of layoff, be credited with any sick leave accrued as of the date of layoff, be paid a salary commensurate with the rank and length of previous service, and be credited with any annual leave (if applicable) which the employee has accrued as of the date of layoff and for which the employee has not received payment.

b. Non Tenured Faculty and Non-classified Contract Employees

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

- (1) If an offer of reinstatement is not accepted, the employee's name may be deleted from the reinstatement list, and if so deleted, the Board has no further obligation to the employee.
- (2) A non-tenured faculty member or a non-classified contract employee who is laid off may continue to contribute toward and receive the benefits of any applicable state or University of Idaho insurance program if the laws, rules, regulations, policies, and procedures governing the administration of such insurance program so permit.
- (3) A non-tenured member of the faculty who has been laid off and who accepts reemployment at the institution will resume the rank held at the time of layoff, be credited with any sick leave accrued as of the date of layoff, be paid a salary commensurate with the rank and length of previous service, and will be credited with any annual leave (if applicable) which the employee had accrued as of the date of layoff and for which the employee has not received payment.

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- (4) A non-classified contract employee who has been laid off and who accepts reemployment at the institution will be credited with any sick leave the employee had accrued as of the date of layoff, paid a salary commensurate with the length of previous service, and credited with any annual leave which the employee had accrued as of the date of layoff and for which the employee has not received payment.
7. Employment Actions Other than a Layoff. The implementation of personnel actions other than a layoff shall follow the requirements of this topic 7.
- a. If the Plan for addressing the financial exigency includes employment actions other than, or in addition to, a layoff, the employees affected by such actions shall be entitled solely to such procedures as are set forth in this topic and those that may be set forth in the Plan, if any. Such procedures must include at least thirty (30) days written notice prior to the effective date of the action and an informal opportunity for the employee to be heard. The notice must include the effective date of the employment action; a statement of the basis for the Board's action to declare a financial exigency; a statement of the basis for the employment action and a description of the process for the opportunity to be heard. Such process must be prompt, expeditious and fair, but shall be informal. The application of evidentiary rules, questioning of witnesses (including cross-examination), rules concerning burden of proof, the participation of legal counsel, and similar and related attributes of more formal adjudication shall not be required. The employee may contest the action based on whether the agency, institution or school followed the appropriate policies and procedures and the terms of the Plan; whether the action was made for constitutionally impermissible reasons; or whether any other improper criteria were applied. The hearing will not review the Board's decision to declare a financial exigency or the funding distribution among and within the institutions, agencies, or school. The decision of the Board to declare a financial exigency is at the Board's sole discretion, and may not be contested by any employee in any type of hearing or appeal procedure. The written recommendation of the hearing officer or body must be conveyed to the chief executive officer who shall make a final decision. There is no right of appeal to the Board.
- b. There are no reinstatement rights with respect to employment actions other than a layoff. Remedies, if any, to which employees are entitled, shall be set forth in the Plan.
8. Financial Exigency Program Closure, Relocation or Discontinuance.
- a. Faculty or staff being laid off as a result of a program closure, relocation or discontinuance pursuant to a financial exigency Plan shall be entitled to the same procedural rights as any other layoff pursuant to a financial exigency. Provided,

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however, the reinstatement rights only exist if the program is reinstated by the institution, not merely if the position is filled.

- b. Students enrolled in a program that is closed, relocated or discontinued pursuant to a financial exigency Plan should be given notice of the closure as soon as is practical. Notwithstanding any other provision of Board policy, institutional policy, or institutional catalog statements to the contrary, arrangements should be made for enrolled students to complete affected programs in a timely manner and with minimum interruptions. When there is a similar program within the institutions governed by the Board, an affected student will be provided with information on transferring to that program, although admission to any such program is contingent upon the availability of a position and the student's meeting any applicable admission requirements. If there is no similar program available within the institutions governed by the Board or the student is not able to gain admission to a similar program, the institution will make reasonable efforts to place the student in a related or comparable program within the institution. If none is available, the institution will make reasonable efforts to assist the student in locating to another program at the institution or elsewhere for which he or she is qualified.

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

Idaho State Board of Education

**GOVERNING POLICIES AND PROCEDURES**

SECTION: III. POSTSECONDARY AFFAIRS

SUBSECTION: G. Instructional Program Approval and Discontinuance

August 2007

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**G. Instructional Program Approval and Discontinuance**

1. Authority and Scope

Instructional programs at the University of Idaho, Idaho State University, Boise State University, and Lewis-Clark State College, Eastern Idaho Technical College, North Idaho College and the College of Southern Idaho are subject to the policies and procedures provided in this subsection pursuant to Idaho Code §33-107. This policy does not apply to instructional programs that are discontinued as a result of financial exigency as defined and discussed in Section II.N. of these policies.

The Board affirms that a major percentage of instructional program planning, assessment, and review rests with the institutions, both in theory and in practice. However, the Board has final authority and responsibility for how a program and the curriculum relate to other institutions, the system as a whole, and the needs of the consumers. The Board also anticipates that all postsecondary program approvals will include identifiable learning outcomes and competence measurements for graduates of their programs.

The Council on Academic Affairs and Programs (CAAP) is authorized to make recommendations on instructional program issues. The CAAP serves as the working unit of the Instruction, Research and Student Affairs (IRSA) committee at their direction and pleasure. Changes, duties, and responsibilities are at the discretion of IRSA and the Board.

2. Classifications and Definitions

a. Instructional Programs

(1) Academic Program

(a) An academic program is a systematic, usually sequential, grouping of courses (i.e., curricula) that provides the student with the knowledge and competencies required for an academic certificate, or an associate, baccalaureate, master's, specialist, or doctoral degree (See definitions in Section III E-1). There are several distinct degree and certificate programs depending upon time and orientation of the curriculum. A course or series of courses leading to an Academic Certificate of Completion is not considered an academic program for approval purposes.

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(b) Academic Program Components

i. Major

A principal field of academic specialization that usually accounts for 25 to 50 percent of the total degree requirements; the concentration of coursework in a subject-matter major serves to distinguish one program from others leading to the same or a similar degree.

ii. Minor

A body of coursework that pertains to a secondary area of academic or specialization. The coursework usually amounts to between 15 to 25 percent of the total degree requirements.

iii. Emphasis

One of two or more alternatives within the same major but usually affecting only 20 to 40 percent of the requirements in the major.

iv. Option

One of two or more alternatives within the same major; the differences between the options usually amount to 50 percent or more of the requirements in the major.

(2) Professional-Technical Programs

(a) A professional-technical program is a systematic, usually sequential, grouping of courses (i.e., curricula) that provides the student with the knowledge and competencies required for a postsecondary technical certificate, a technical certificate, an advanced technical certificate, or an associate of applied science degree (See definitions in Section III E-1). There are several distinct degree and certificate programs depending upon time and orientation of the curriculum. A course or series of courses leading to a technical certificate of completion is not considered a program for approval purposes.

(b) Option - options of a program provide alternative instructional paths to fields of specialized employment, consist of more than one specialized course, and may have a separate advisory committee. Justification is based on availability of employment requiring the optional specialized training.

b. Instructional Units

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Instructional Units include: Departments, Institutes, Offices, Centers, Divisions, Schools, Colleges, Campuses, Branch Campuses, and Research Units.

3. Program Planning

The Board affirms that instructional program approval is a collaborative process, which includes the Board, its staff, the institutions, the faculty, external advisory groups, regional and specialized accreditation bodies, and other interested parties. Consistent with the Board's philosophy of institutional autonomy in matters of internal management, each institution assumes primary responsibility for the creation of new programs, and for the internal review of existing programs, which may lead to changes or discontinuance. However, the Board provides the following general expectations related to program planning:

- a. With respect to academic programs, strategic planning permits the institutions to focus upon strengths distinctive from other institutions, and in accordance with its approved mission statement. The result is an opportunity for access to a broad spectrum of high quality programs.
- b. For professional-technical programs, strategic planning permits each institution to fulfill its role in serving the needs of its assigned service region. Input from local business and industry is expected.
- c. All existing instructional programs are reviewed systematically by the institution. The findings from these reviews permit the institutions to build program quality, respond to the needs of their constituents, and deliver cost effective and performance based programs to the citizens of Idaho.
- d. The standards for the program approval process are rigorously applied according to the Board's priorities for quality, unnecessary duplication, centrality to institutional role and mission, demand, and resource sharing.
- e. Institutional efforts are directed toward meeting those needs that are a high priority to the state.
- f. Expansion or reduction of programs and services is implemented consistent with institutional program priorities and statewide needs.
- g. Input from consumers, appropriate agencies and professional boards, (e.g., dentistry, medicine, nursing, pharmacy, etc.), and the Professional Standards Commission is expected when developing or modifying new programs.

4. Program Approval Policy

Program approval will take into consideration statewide and institutional objectives.

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- a. New instructional programs, instructional units, majors, minors, options, and emphases require approval prior to implementation;

- (1) Board Approval – Board approval prior to implementation is required for any new:

- (a) academic professional-technical program, new major, minor, option, emphasis, or instructional unit with a financial impact\* of \$250,000 or more per year;

- (b) graduate program leading to a master's, specialist, or doctoral degree.

- (2) Executive Director Approval – Executive Director approval prior to implementation is required for any new academic or professional-technical program, major, minor, option, emphasis or instructional unit with a financial impact of less than \$250,000 per year.

- b. Existing instructional programs, majors, minors, options, emphases and instructional units.

- (1) Changes, additions, expansions, and consolidations to existing instructional programs, majors, minors, options, emphases, or instructional units with a financial impact of \$250,000 or more per year require Board approval prior to implementation.

- (2) Changes, additions, expansions, and consolidations to existing instructional programs, majors, minors, options, emphases or instructional units with a financial impact of less than \$250,000 require executive director approval prior to implementation. The executive director may refer any of the requests to the Board or a subcommittee of the Board for review and action. All modifications approved by the executive director shall be reported quarterly to the Board. Non-substantive name or title changes need not be submitted for approval.

- c. Routine Changes

Non-substantive changes, credits, descriptions of individual courses, or other routine catalog changes do not require notification or approval. Institutions must provide prior notification of a name or title change for programs, degrees, departments, divisions, colleges, or centers via a letter to the Office of the State Board of Education.

## 5. Approval Procedures

- a. Board Approval Procedures

- (1) Subsequent to institutional review and consistent with institutional policies, all requests requiring Board approval will be submitted by the institution as a notice of intent in the manner prescribed.

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- (2) Academic requests will be forwarded to the Chief Academic Officer. The Chief Academic Officer shall forward the request to the CAAP for its review and recommendation. If the CAAP recommends approval, the proposal shall be forwarded to the Board for action. Requests that require new state appropriations will be included in the annual budget request of the institution and the State Board of Education.
- (3) Professional-technical requests will be forwarded to the State Administrator of the Idaho Division of Professional-Technical Education for review and recommendation. The Administrator shall forward the request to the CAAP for its review and recommendation. If the CAAP and/or PTE administrator recommends approval, the proposal shall be forwarded, along with recommendations, to the Board for action. Requests that require new state appropriations will be included in the annual budget request of the Division and the State Board of Education.
- (4) CAAP may, at its discretion, request a full proposal for any request requiring a notice of intent. A request for a new graduate program requires a full proposal. Full proposals should be forwarded to CAAP members at least two (2) weeks prior to the next CAAP meeting for initial review prior to being forwarded to the Board for approval.
- (5) As a part of the full proposal process, all doctoral program request(s) will require an external peer review. The external peer-review panel will consist of at least two (2) members and will be selected by the Board's Chief Academic Officer and the requesting institution's Chief Academic Officer. The review will consist of a paper and on-site review followed by the issuance of a report and recommendations by the peer-review panel. Considerable weight on the approval process will be placed upon the peer reviewer's report and recommendations.

b. Executive Director Approval Procedures

- (1) All academic requests delegated for approval by the Executive Director will be submitted by the institution as a notice of intent in a manner prescribed by the Chief Academic Officer of the Board. At the discretion of the Chief Academic Officer, the request may be forwarded to the CAAP for review and recommendation. All professional-technical requests delegated for approval by the Executive Director will be forwarded to the State Administrator of Professional-Technical Education for review and recommendation. At the discretion of the State Administrator, the request may be forwarded to the CAAP for review and recommendation.
- (2) Requests will then be submitted, along with the recommendations, to the Executive Director for consideration and action. The Executive Director shall act on any request within thirty (30) days.

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(3) If the Executive Director denies the request he or she shall provide specific reasons in writing. The institution has thirty (30) days in which to address the issue(s) for denial of the request. The Executive Director has ten (10) working days after the receipt of the institution's response to re-consider the denial. If the Executive Director decides to deny the request after re-consideration, the institution may send its request and the documents related to the denial to the Board for final reconsideration.

(4) Distance Learning Delivery and Residence Centers

All academic and professional-technical programs delivered to sites outside of the service area defined by the institution's role and mission statement shall be submitted using the process outlined above.

6. Official Program Listing

The Office of the State Board of Education will maintain the Official Program and Degree Listing of Board approved academic and professional-technical programs offered at the public institutions. Changes or modifications to the Official Program and Degree Listing require prior OSBE approval. The official program and degree listing will use the U.S. Department of Education's most current classification of instruction program (cip) codes as a tracking and approval mechanism.

7. Criteria for Review of New Instructional Programs

The following criteria are used for the statewide review of requests for new academic and professional-technical programs. The CAAP is responsible for maintaining the criteria to reflect the current priorities of the IRSA committee and the Board for instructional program quality, unnecessary duplication, centrality to role and mission, and resource sharing as a method for improving quality, access, cost efficiency, and outcome measures.

- a. Quality – the full proposal must include documentation that the new instructional program will be of high quality. To ensure quality programs, the institution should address the following: curriculum, faculty, students, infrastructure support, funding resources, outcome and performance measures, business and industry support and partnerships, State Licensing Board acknowledgment and other agency support where appropriate. Accreditation reviews, self-study reports, external peer-review evaluations, etc. are encouraged as part of the documentation of quality.
- b. Duplication – the institution submitting the full proposal must document that the new instructional program avoids duplicating an existing program or presents evidence that duplication is warranted.

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- c. Centrality – the institution must clearly document and ensure that the new instructional program is consistent with its Board approved role and mission statement.
- d. Demand – the institution seeking a new instructional program will address student, regional, and statewide needs. In addition to access and demand, (i.e., the anticipated number of students seeking admission to the proposed program), it is important to recognize the needs of other consumers such as business, industry, and governmental agencies. Further, communication and cooperation with the appropriate standard of practice agency (e.g., licensing board), as it relates to student graduate placements and needs of the respective professions, is expected.
- e. Resources – documentation concerning cost efficiency of the new instructional program is also required before the Board can take action on the full proposal. The institution must assure the Board of effective use of resources in promoting the new program. In addition, the impact that the new program will have on existing programs at the institution, faculty, facilities, library, etc. must be addressed. The budget for the proposed program clearly tracks the source and amount of funds (e.g., new funds, reallocation, resource sharing with business, industry, other institutions, contract agencies, federal government, etc.).

8. Instructional Program Discontinuance Policy

If in conflict, any policies of the Board of Trustees of North Idaho College, or the Board of Trustees of the College of Southern Idaho related to program discontinuance shall supersede the policies set forth herein.

(a) discontinuance of professional-technical programs requires Board approval.

(b) discontinuance of academic programs, majors, minors, options, emphases or instructional units with a financial impact of \$250,000 or more per year requires Board approval.

(c) discontinuance of academic programs, majors, minors, options, emphases or instructional units with a financial impact of less than \$250,000 requires executive director approval. The executive director may refer any of the requests to the Board or a subcommittee of the Board for review and action. All discontinuances approved by the executive director shall be reported quarterly to the Board.

9. Instructional Program Discontinuance Criteria and Procedures

If in conflict, any criteria or procedures of the Board of Trustees of North Idaho College, or the Board of Trustees of the College of Southern Idaho related to program discontinuance shall supersede the policies set forth herein.

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a. Criteria for Discontinuance of Academic Programs, Units or Components

The primary consideration in instructional program discontinuance will be whether the instructional program is an effective use of the institution's resources, and specific criteria supporting instructional program discontinuance will include, but will not be limited to:

- (1) Quality – the institutions should address the following: curriculum, faculty, students, infrastructure, support, funding resources, outcome/performance measures, business industry support/partnerships, State Licensing Board acknowledgement, and other agency support where appropriate. Accreditation reviews, self-study reports, external peer review evaluations, etc. should also be considered when determining quality.
- (2) Duplication – the institution should consider whether the program duplicates an existing program or whether there is evidence that duplication is unwarranted.
- (3) Centrality – the institution should consider whether the program is inconsistent with the Board's approved role and mission for the institution.
- (4) Demand – the institution should consider whether the program addresses student, regional, and statewide needs. In making this consideration, the institution should look at access to the program, the needs of other consumers such as business, industry, and governmental agencies, communication and cooperation with the appropriate standard practice of agency (e.g. licensing board).
- (5) Resources – the institution should consider whether the program is cost efficient and whether the program is an effective use of resources. In making this determination, the institution should consider the impact of the program on other programs, faculty, facilities, library, etc.

b. Procedures for Academic Program Discontinuance -- Students and Employees

(1) Students

Institutions shall develop policies, in accordance with the Northwest Association of Schools and Colleges Accreditation Handbook, requiring that arrangements be made for enrolled students to complete affected programs in a timely manner and with minimum interruptions.

(2) Employees

This policy does not apply to instructional programs that are discontinued as a result of financial exigency as defined and discussed in Section II.N. of these

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policies. Any faculty or staff members whose employment the institution seeks to terminate due to the discontinuance of a program based upon Section III.G. shall be entitled to the following procedures:

- (a) Non-classified contract employees, including non-tenured faculty, may be dismissed or have their contracts terminated or non-renewed in accordance with Board and institutional policies.
  - (b) State of Idaho classified employees shall be subject to layoff as provided in the rules of the Division of Human Resources. Classified employees of the University of Idaho shall be subject to layoff as provided in the policies of the University of Idaho.
  - (c) Tenured faculty will be notified in writing that the institution intends to dismiss them as a result of program discontinuance. This notice shall be given at least twelve (12) months prior to the effective date of termination.
  - (d) An employee who receives a notice of termination as a result of program discontinuance is entitled to use the internal grievance procedures of the institution. The sole basis to contest a dismissal following a program closure is in compliance with these policies.
- c. Criteria for Discontinuance of Professional-Technical Programs or Components

Complete criteria and procedures related to postsecondary professional-technical program discontinuance can be found in IDAPA 55.01.02.