

**BUSINESS AFFAIRS AND HUMAN RESOURCES  
FEBRUARY 18, 2010**

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<b>TAB</b>	<b>DESCRIPTION</b>	<b>ACTION</b>
<b>1</b>	<b>IDAHO STATE UNIVERSITY</b> Employment Agreement – Head Football Coach	Motion to approve
<b>2</b>	<b>AMENDMENTS TO BOARD POLICY</b> Sections II.B.2; II.F.1-2; II.G.1; II.N. – 2nd Reading	Motion to approve

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**FEBRUARY 18, 2010**

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**IDAHO STATE UNIVERSITY**

**SUBJECT**

Extension of the employment agreement for Head Football Coach, John Zamberlin

**REFERENCE**

February, 2007

A three-year fixed term appointment for Head Coach John Zamberlin was approved by the Board

**APPLICABLE STATUTE, RULE OR POLICY**

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

**BACKGROUND/DISCUSSION**

John Zamberlin has been the head football coach at ISU since December, 2006. An employment agreement for a fixed term appointment of three (3) years was approved by the Board at their February, 2007 meeting. This is a request for an extension to the employment agreement of an additional two (2) years and two (2) months. The primary terms of the agreement are set forth below and the entire agreement and matrix comparison to the SBOE model contract are attached.

**IMPACT**

The proposed extension is for a fixed-term appointment of two (2) years and two (2) months commencing on November 1, 2009 and terminating on January 22, 2012. The base annual salary is \$104,041.60 and is funded by appropriated funds. Terms for supplemental compensation are listed in the Employment Agreement, Attachment 1, Article III. C. This agreement will provide a stable coaching environment for the football program as well as stability and consistency for the Athletic Department as a whole.

**ATTACHMENTS**

Attachment 1 – Employment Agreement

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Attachment 2 – Matrix

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**STAFF AND COMMENTS AND RECOMMENDATIONS**

The base compensation amount is \$104,041 (\$94,678 as coach and the remainder for teaching duties), with a courtesy automobile provided, if available. Compensation includes \$20,000 for media appearances. The contract includes a series of incentive payments to the coach if the football team achieves certain Academic Progress Rate (APR) levels. The contract includes liquidated damages of an amount equal to the annual salary payable to ISU if the Coach terminates the Agreement for convenience on or before December 31, 2010; or if the Agreement is terminated between January 22, 2011 and January 22, 2012, the sum of \$65,000.00. The liquidated damages shall be due and payable within

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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. Staff recommends approval of the contract.

**BOARD ACTION**

A motion to approve the request by Idaho State University for approval of the extension of the Employment Agreement for John Zamberlin as the Head Football Coach (1.0 FTE) as submitted.

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

## EMPLOYMENT AGREEMENT

This Agreement between Idaho State University ("*University*") and John Zamberlin, head football coach ("*Coach*") (each individually a "*Party*" and collectively, the "*Parties*"), takes effect on November 01, 2009 ("*Effective Date*").

### I. Engagement.

#### A. Definitions.

1. "*Director*" means University's director of athletics.
2. "*Head*" means head coach of the Team (defined below).
2. "*President*" means University's president.
3. "*Team*" means University's intercollegiate football team.

#### B. Employment. Under this Agreement, the University appoints Coach as its Head under a fixed term described below. Coach represents and warrants that Coach is fully qualified to serve, and is available for employment, in this capacity.

#### C. Reporting Relationship. Coach reports and is responsible directly to the Director or the Director's designee. Coach is also under the general supervision of the President. Coach must:

1. abide by any reasonable instruction of Director or the Director's designee; and
2. confer with the Director or the Director's designee on all administrative and technical matters.

#### D. Duties.

1. *In General.* Coach must:
  - a. manage and supervise the Team; and
  - b. perform any other duty in the University's athletic program that the Director assigns and as this Agreement elsewhere describes.
2. *Non-Team Activity.* The University at any time has a right to reassign Coach to any duty at the University other than as Head. That reassignment:
  - a. does not affect Coach's primary compensation and benefits, but
  - b. does cease Coach's opportunity to earn supplemental compensation as provided in sections III.C.1 through III.C.7.

#### E. Suspension; Reassignment. The University has discretion at any time to suspend Coach from part or all of Coach's duties, temporarily or permanently, with or without pay, or to reassign Coach to other duties.

## II. **Effective Period.**

### A. Definitions.

1. “*Board*” means the Idaho State Board of Education.
2. “*Term*” means a period during which the Agreement is in effect.

B. Term. The Term is two years and two months, beginning on Effective Date, and expiring, without further notice to Coach, on January 22, 2012, unless earlier terminated as set forth further below.

### C. Extension and Renewal.

1. *Procedure.* 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 Board’s prior approval.
2. *No Tenure Right.* This Agreement in no way grants to Coach a claim to tenure in employment. Coach’s service under this Agreement does not count in any way toward tenure at the University.

## III. **Financial Matters.**

### A. Definitions.

1. “*Annual Salary*” means a primary compensation amount corresponding to each consecutive twelve month period during the Term.
2. “*APR*” means a measurement that the NCAA (defined below) uses to track academic progress of NCAA-eligible student athletes and NCAA athletic programs.
3. “*Car Program*” means a University-administered program that provides vehicles for specified University personnel.
4. “*Conference*” means Big Sky conference.
5. “*Department*” means University’s athletics department.
6. “*NCAA*” means the National Collegiate Athletic Association.
7. “*Personnel*” means Coach’s assistant coaches, any other employee for whom Coach is administratively responsible and Team members.
8. “*Championships*” means football post-season tournament.
9. “*Youth Camp*” means a boys’ youth football camp at any University facility.

B. Regular Compensation. In exchange for Coach’s services and satisfactory performance of this Agreement, the University during the Term must provide to Coach:

1. **\$104,041.60** per year as an Annual Salary, payable in biweekly installments according to normal University procedures, subject to increase upon:
    - a. appropriate Director and President determination; and
    - b. Board approval;
  2. for Coach's actual participation in radio and television appearances:
    - a. each following per-year amount, which is considered salary for purposes of section V.A.2.a:
      - i. **\$20,000** for 2009-2010 season; and
      - ii. **\$20,000** for 2010-2011 season;
    - b. each above amount being payable:
      - i. no later than any next closest pay period after a corresponding season's final Team game; and
      - ii. with Coach's coordination.
  3. an opportunity to receive any employee benefit that the University makes generally available to its non-faculty exempt employees;
  4. an opportunity to receive any employee benefit that the Department makes generally available to its employees of a comparable level; and
  5. subject to availability, a courtesy car that the Director assigns to Coach through the Car Program during Coach's assignment as Head.
- C. Supplemental Compensation. Subject to conditions stated below, Coach has an opportunity to obtain additional compensation during the Term.
1. *Eligibility*. As determined at the President's sole discretion in consultation with the Director, Coach's right to receive any compensation item set forth under this section V.C and its subsections is contingent on the Coach's and Personnel's acceptable conduct:
    - a. on the University campus;
    - b. at University activities;
    - c. in the surrounding community; and
    - d. generally elsewhere.
  2. *Regular Season Title Bonus*. The University must pay to Coach an additional one week's pay of Coach's Annual Salary (*i.e.*, 1/52 x Annual Salary) for each year during which the Team wins a regular season Conference championship.
  3. *Tournament Bonuses*.

- a. Big Sky. The University must pay to Coach an additional one week's pay of Coach's Annual Salary for each year during the Term at which the Team upon the regular season's conclusion has:
  - i. obtained an automatic NCAA Championships berth otherwise.
- b. NCAA Championships. If the Team – either by automatic qualification or as an at-large choice – competes in the NCAA's Championships, then University cumulatively also must pay Coach for advancing the tournament bracket as follows:

Round 1	16 teams	1 <sup>st</sup> win	\$ 2,000.00
Round 2	8 teams	2 <sup>nd</sup> win	\$ 4,000.00
Round 3	4 teams	3 <sup>rd</sup> win	\$ 6,000.00
Round 4	2 teams	4 <sup>th</sup> win	\$8,000.00

Possible national championship  
winner computation bonus total: **\$20,000.00**

3. *Record Bonus*. Coach is eligible to receive supplemental compensation equivalent to one week's salary for winning ten (10) or more regular season football games.
4. *Team APR Bonus*. Coach annually is eligible contingently to receive supplemental compensation for Team members' academic achievements. University must pay to Coach as indicated below for any year during the Term that the Team's four-year APR meets a NCAA's national ranking range within football listed below:

<u>Team APR Ranking</u>	<u>Incentive Pay</u>
50%-59%	\$1,000.00
60%-69%	\$2,000.00
70%-79%	\$3,000.00
80% or above	\$5,000.00

5. *Conference Recognition Bonus*. During any year under the Term that the Conference names Coach as its so-called "Coach of the Year," University additionally must pay Coach **\$2,500.00**.
6. *Summer Camp operated by University*. Despite its exclusive right to operate any Youth Camp, the University must allow Coach an opportunity as a University employee to earn compensation related to that camp.
  - a. Duties. For any Youth Camp in which Coach chooses to participate, Coach's duties include:
    - i. directing that camp's marketing, supervision, and general administration; and



- ii. performing any other related obligation that the Parties mutually choose.
- b. Payment. In exchange for Coach's participation in any Youth Camp, the University additionally must:
  - i. pay Coach any net revenues resulting from that camp, payable no later than thirty days after the camp ends; or
  - ii. upon the Coach's instruction, direct those net revenues as an enhancement to the football program budget at the University.
- c. Interruption. Upon any suspension, reassignment or Agreement termination, University:
  - i. is not under any obligation to permit Coach to hold a Youth Camp after that termination, suspension, or reassignment takes effect; and
  - ii. is released from all obligations relating to that camp.

D. General Conditions of Compensation.

- 1. *Deductions; Withholdings.* All compensation that University provides to Coach is subject to deductions and withholdings as required by law or the requirements of any fringe benefit in which Coach participates.
- 2. *Employee Benefits.* Any employee fringe benefit – based in whole or in part upon compensation that the University provides to Coach – is so based only under section III.B, unless a specific fringe benefit program requires otherwise. Coach's right to that benefit through the University or Department is conditioned upon Coach having fulfilled each current or later-amended requirement set forth by that benefit's provider.

IV. **Coach's Professional Obligations.** Coach must cooperate fully with the University and Department at all times.

A. Definitions.

- 1. "*Benefactor*" means any person, association, corporation, University booster club, University alumni association, University foundation, or other benefactor providing any benefit to Coach.
- 2. "*Company*" means any entity that the University has selected to provide footwear, apparel or equipment applicable to the Agreement.
- 3. "*Deadline*" means the close of business on June 30th of each year or the last regular University work day preceding June 30<sup>th</sup>.

4. “*Mark*” means any University name, logo, trademark, trade name, or other University designation (including contraction, abbreviation or simulation).
  5. “*Requirement*” means any applicable law or any policy, rule or regulation of the University, the Board, the Conference, or the NCAA, as further described in Exhibit A (attached and incorporated into this Agreement).
  6. “*Violation Incident*” means any instance in which Coach has reasonable cause to believe that any person or entity has violated or is likely to violate any Requirement.
- B. Coach’s Specific Duties and Responsibilities. In exchange for the compensation specified in this Agreement, and in addition to each obligation set forth elsewhere in this Agreement, Coach must:
1. devote Coach’s full time and best efforts to performing Coach’s Agreement duties;
  2. develop and implement programs and procedures with respect to evaluating, recruiting, training, and coaching Team members that enable them to:
    - a. compete successfully; and
    - b. reasonably protect their health, safety, and well-being; and
  3. observe and uphold the University’s academic standards, requirements, and policies and encourage Team members to:
    - a. perform to their highest academic potential; and
    - b. graduate in a timely manner.
- C. Outside Activities.
1. *Distractions.* Coach must not undertake any business, professional or personal activity or pursuit that would:
    - a. prevent Coach from devoting Coach’s full time and best efforts to performing Coach’s Agreement duties;
    - b. detract from those duties in any manner otherwise; or
    - c. at University’s sole determination, reflect adversely upon the University or its athletic program.
  2. *Allowable Involvement.* Upon prior written approval from the Director (who may consult with the President), Coach has a right to enter into any separate arrangement for an outside activity or endorsement that is consistent with this Agreement. Coach must obtain prior written approval from the Director and the President before using any Mark in connection with that arrangement.
- D. NCAA Rules.

1. *Outside Income.* Under NCAA rules, Coach must:
    - a. obtain the President's written approval before receiving any athletically-related income or benefit from any source outside the University; and
    - b. report the source and amount of all that income and benefits to the University's President whenever reasonably requested, but in no event less than annually before the Deadline.
  2. *Format.* Coach must cause the above outside income report to be in a format reasonably satisfactory to University.
  3. *Prohibited Sources.* Coach directly or indirectly must not accept or receive from any Benefactor any money, benefit, or gratuity, if its acceptance or receipt by Coach would violate any Requirement.
- E. Hiring Authority. Coach has the responsibility and sole authority to recommend to the Director any hiring or termination of any assistant coach for the Team. The Director makes any final decision to hire or terminate an assistant coach and – when necessary or appropriate – that decision may be subject to the President's and Board's advanced approval.
- F. Personnel Changes. A listing of each name or title of any employee whom Coach supervises is attached as Exhibit B (attached and incorporated into this Agreement), Coach promptly throughout the Term must provide an update to this listing upon any employment change under Coach's supervision. That updated listing supersedes each prior Exhibit B version and is automatically incorporated into this Agreement.
- G. Scheduling. Coach must consult with, and may make recommendations to the Director or the Director's designee with respect to the scheduling of Team competitions. The Director or the Director's designee makes any final scheduling decision.
- H. Other Coaching Opportunities. Coach during the Term must obtain the Director's approval before actively seeking, negotiating for, or accepting any basketball coaching employment at any other higher education institution or with any professional sports team. The University must ensure that the Director does not unreasonably withhold any approval described under this paragraph. Coach must keep the Director informed regarding any negotiation that Coach has begun as set forth above.
- I. Product Tie-Ins.
1. *Exclusivity.* University has an exclusive right to select footwear, apparel or equipment for Coach, other staff and student-athletes to use during:
    - a. any official practices or game; and

- b. any time when Coach or the Team is:
      - i. being filmed by motion picture or video camera; or
      - ii. posing for any photograph in Coach's and/or Team's capacity as University's representative.
  - 2. *Consultation.* Upon the University's reasonable request, Coach must provide services among the following:
    - a. consulting with appropriate parties concerning Company's product's design or performance;
    - b. instructing at a clinic sponsored in whole or in part by that Company;
    - c. presenting a lecture at an event sponsored in whole or in part by that Company, and
    - d. making any other educationally-related appearance that University reasonably requests.
  - 3. *Conflicts.* Despite the preceding sentence, Coach retains a right to decline any appearance that Coach reasonably considers to conflict with or hinder Coach's Agreement duties and obligations.
    - a. *Competitive Transactions.* Coach diligently must avoid entering into any binding arrangement with a competitor of that Company. Coach must submit each proposed outside consulting agreement to the University for the Director's review and approval before signing it.
    - b. *Outside Income.* Coach must also report that outside income to the University according to NCAA rules. Coach must not:
      - i. endorse any athletic footwear, apparel or equipment product, including its manufacturer or other merchandizing entity; or
      - ii. participate in any message or promotional appearance that contains a comparative or qualitative description of athletic footwear, apparel or equipment product.
- J. Compliance. Coach must:
  - 1. know, recognize, and comply with each Requirement;
  - 2. supervise and take appropriate steps to ensure Personnel's knowledge, recognition and compliance of each Requirement; and
  - 2. immediately report to the Director and to the Department's Director of Compliance any Violation Incident arising from any representative of the University's athletic interests.

V. **Termination.** Any for-cause ground, remedy or prohibition described under this Article also applies – at the University’s discretion – to suspending or reassigning Coach as described in section I.E.

A. By University.

1. *For Cause.* The University at any time has a right to terminate this Agreement for good or adequate cause, as those terms are defined in applicable rules and regulations.

a. Additional Grounds. University’s for-cause grounds to terminate also include the following:

- i. any deliberate and major violation of Coach’s Agreement duties or the refusal or unwillingness of Coach to perform them in good faith and to the best of Coach’s abilities;
- ii. Coach’s failure to remedy any Agreement violation as of thirty days after University’s written notice to Coach of that violation;
- iii. any deliberate or major Requirement violation by Coach under this Agreement or during Coach’s employment at another NCAA or NAIA member institution;
- iv. ten working days’ absence of Coach from duty under the Agreement without the University’s consent;
- v. any conduct of Coach that constitutes moral turpitude or that University considers to reflect adversely on the University or its athletic programs;
- vi. Coach’s failure to represent positively the University and its athletic programs in any public or private forum;
- vii. Coach’s failure of Coach fully and promptly to cooperate with the NCAA or the University in any investigation of any Requirement’s possible violation;
- viii. Coach’s failure to report a known Requirement violation by any Personnel; or
- ix. any Violation Incident arising from Personnel, if Coach knew or should have known of the violation and could have prevented it by ordinary supervision.

b. Procedure. University has a right to terminate for good or adequate cause as follows:

- i. before the termination takes effect, the Director or his designee provides Coach with notice as set forth in

- this Agreement, include any reason for the contemplated action;
      - ii. Coach then has an opportunity to respond; and
      - iii. after Coach responds or fails to respond, University must notify Coach whether, and if so, when the action has effect.
    - c. Effect of Termination. Upon University's termination for good or adequate cause:
      - i. the University's obligation to provide compensation and benefits to Coach, whether direct, indirect, supplemental or collateral, ceases as of the date of that termination; and
      - ii. University is not liable for the loss of any collateral business opportunity or other benefit, perquisite, or income resulting from any outside activity or other source.
    - d. NCAA Sanction. If Coach is found to violate any NCAA regulation, then along with Section V.A, Coach is subject to disciplinary or corrective action under NCAA enforcement procedures. This paragraph applies to any violation occurring at the University or at any previous institution at which the Coach was employed.
  - 2. For Convenience. At any time during the Term, University has a right to terminate this Agreement for University's convenience by giving ten days' prior written notice to Coach. If University terminates this Agreement for its convenience, then:
    - a. University must pay Coach any due amount under sections III.B.1 and III.B.2.a, excluding any deduction that law requires, on each regular University payday until the first of the following occurs:
      - i. the Term expires; or
      - ii. Coach obtains reasonably comparable employment;
    - b. Coach is entitled to continue Coach's health insurance plan and group life insurance as if Coach remained a University employee until the first of the following occurs:
      - i. the Term expires; or
      - ii. Coach obtains reasonably comparable employment or any other employment providing Coach with a reasonably comparable health plan and group life insurance;

- c. Coach is entitled to no other compensation or fringe benefit, unless this Agreement provides or law requires otherwise;
- d. if Coach obtains employment at any lesser amount after that termination, then:
  - i. the amount that University must pay is adjusted and reduced by that lesser amount; and
  - ii. that adjusted compensation is to be calculated for each University pay-period by the following steps:
    - STEP 1: reducing the section III.B.1 amount (before any deduction that law requires) by Coach's gross compensation under the lesser employment; and
    - STEP 2: from this adjusted gross compensation, subtracting each legally-required deduction.
- e. Coach specifically must:
  - i. inform University no later than ten business days after obtaining any other employment; and
  - ii. advise University of the employment's nature, location, salary, compensation, health insurance, life insurance, other fringe benefits and each other relevant provision;
- f. any failure by Coach to so inform and advise University constitutes a material Agreement breach that ends University's payment obligation under this for-convenience termination provision; and
- g. Coach further must repay to University any compensation that University has paid to Coach:
  - i. after the date Coach obtains that other employment; and
  - ii. to which Coach is not entitled under this for-convenience termination provision.

C. Termination by Coach for Convenience.

- 1. *University Investment Interest.* The Coach recognizes that Coach's promise to work for University for the entire Term is this Agreement's essence. The Coach also recognizes that:
  - a. the University is making a highly valuable investment in Coach's employment by entering into this Agreement; and
  - b. University's investment would be lost if Coach resigns or terminates Coach's employment with the University before Term's expiration otherwise.

2. *Termination Right.* The Coach has a right to terminate for Coach's convenience during the Term by giving prior written notice to the University. That termination takes effect ten days after Coach delivers that notice to the University. If the Coach terminates this Agreement for convenience at any time, then:
    - a. each University obligation ceases immediately when the termination takes effect;
    - b. Coach must pay to the University, as liquidated damages and not a penalty, for the breach of this Agreement an applicable amount as described below:
      - i. the whole amount set forth in section III.B.1 for the then-current Term, if Coach terminates the Agreement on or before December 31, 2010; or
      - ii. **\$65,000.00**, if the Agreement is terminated between January 22, 2011, and January 22, 2012, inclusive; and
    - c. liquidated damages are due and payable no later than twenty days after the termination takes effect and any unpaid amount bears simple interest at a rate of eight percent *per annum* until paid.
- D. Termination due to Disability or Death of Coach. "*Function*" means an essential Head function under the Agreement.
1. *Automatic Termination.* Despite any other Agreement provision, this Agreement terminates automatically if Coach:
    - a. becomes totally or permanently disabled as the University's disability insurance carrier so defines;
    - b. becomes unable to perform any Function; or
    - c. dies.
  2. *Death.* If this Agreement is terminated because of Coach's death, Coach's salary and all other benefits cease as of the last day worked. But the University must pay the Coach's personal representative or other designated beneficiary any:
    - a. compensation due or unpaid; and
    - b. death benefit – due to the Coach's estate or any beneficiary under that estate – that is:
      - i. contained in any fringe benefit plan currently in force; or
      - ii. later adopted by the University as of that termination date.



3. *Disability.* If this Agreement terminates because the Coach becomes totally or permanently disabled as defined by the University's disability insurance carrier, or becomes unable to perform any Function, then:
  - a. University's duty to pay any salary or other benefit ceases; although:
  - b. the Coach remains entitled to receive:
    - i. any compensation due or unpaid; and
    - ii. any disability-related benefit to which Coach is entitled by virtue of employment with the University.
- E. Interference by Coach. Upon any termination by either Party, Coach must not:
  1. interfere with the University's student-athletes; or
  2. obstruct the University's ability to transact business or operate its intercollegiate athletics program otherwise.
- F. No Liability. Irrespective of any circumstance, the University is not liable to Coach for any loss of any collateral business opportunity or other benefit, perquisite or income from any source that ensues:
  1. as a result of any Agreement termination:
    - a. by either party; or
    - b. due to death or disability; or
  2. Coach's suspension or reassignment.
- G. Waiver of Rights.
  1. *Unique Circumstances.* The Coach under this Agreement is receiving a multi-year commitment and an opportunity to receive supplemental compensation. Commitments and opportunities of this type are not customarily afforded to University employees.
  2. *Impact.* Recognizing that commitment and opportunity, under any circumstance that the University suspends or reassigns Coach, or terminates this Agreement for good or adequate cause or for convenience, Coach:
    - a. retains each right that this Agreement provides to Coach under that circumstance; but
    - b. releases the University from compliance with the notice, appeal, and similar employment-related rights provided for in:
      - i. the Board's governing policies and procedures manual; and

- ii. the University's faculty-staff handbook.

VI. **Miscellaneous.**

A. Definitions.

1. "*Force Majeure*" means any prevention, delay or stoppage of a Party's Agreement performance due to any:
  - a. strike;
  - b. lockout;
  - c. labor dispute;
  - d. act of God;
  - e. inability to obtain labor or any material (or reasonable substitute for that labor or material);
  - f. governmental restriction;
  - g. governmental regulation;
  - h. governmental control;
  - i. enemy or hostile governmental action;
  - j. civil commotion;
  - k. fire; or
  - l. other casualty or cause beyond the Party's reasonable control.
2. "*Property*" means any key, credit card, personnel record, recruiting record, team information, film, statistic, material, data, information article, courtesy car, cellular telephone, computer or other personal property.

B. Board Approval. This Agreement has effect only after being approved by the Board and signed by both Parties as set forth below. In addition, University's duty to pay any Agreement compensation is subject to:

1. approval of the Board, the President, and the Director;
2. sufficiency of legislative appropriations;
3. University's receipt of sufficient funds in any account from which that compensation is to be paid; and
4. the Board's and University's rules regarding financial exigency.

- C. University Property.
1. *Scope.* University owns any Property:
    - a. that University has furnished to Coach; or
    - b. that Coach develops:
      - i. on the University's behalf;
      - ii. at the University's direction;
      - iii. for the University's use; or
      - iv. in connection with Agreement employment otherwise.
  2. *Return.* No later than twenty-four hours after the Term's expires or the Agreement earlier terminates, Coach immediately must cause any Property in Coach's possession or control to be delivered to the Director.
- D. Assignment. Each Party must obtain the other Party's written consent before assigning its rights or delegating its obligations under this Agreement.
- E. Waiver. A waiver of any default in performing under this Agreement takes effect only if in writing and signed by the waiving Party. That waiver does not constitute a waiver of any other or later breach. Resorting to a particular remedy upon a breach does not constitute a waiver of any other available remedy.
- F. Severability. If any Agreement provision is determined to be invalid or unenforceable, then the remainder of the Agreement is not affected and remains in effect.
- G. Governing Law. This Agreement is subject to and is to be construed according to the laws of the state of Idaho as an agreement to be performed in Idaho. A Party must bring any action based in whole or in part on this Agreement in the courts of the state of Idaho.
- H. Oral Promises. The University is not bound to any oral promise of any increase in Annual Salary or of any supplemental or other compensation.
- I. Force Majeure. A Party obligated to perform (including financial inability) under the Agreement is excused from performing during any Force Majeure occurrence period.
- J. Confidentiality. The Coach consents to this document being released and made available to the public after the Coach has signed it. The University has sole discretion to release or make available to the public any document or report that Coach is required to produce under this Agreement.
- K. Notices.

1. *Procedure.* Actual notice, however and from whomever received, is always effective.
  - a. Means. A Party must cause each Agreement notice to be in writing and delivered:
    - i. in person;
    - ii. by public or private courier service (including U.S. Postal Service Express Mail);
    - ii. by certified mail with return receipt requested; or
    - iv. by facsimile.
  - b. Relevant Date. Any notice is considered to have been given on the earliest of:
    - i. actual delivery or refusal to accept delivery;
    - ii. the date of mailing by certified mail; or
    - iii. the day facsimile delivery is verified.
2. *Party Addresses.* All notices shall be addressed to the Parties at the following addresses or at such other addresses as the Parties may from time to time direct in writing:
  - a. if to the University: Director of Athletics  
Campus Box 8173  
Idaho State University  
Pocatello, ID 83209-8173  
  
with a copy to: President  
921 South 8<sup>th</sup> Ave. Stop 8310  
Idaho State University  
Pocatello, ID 83209-8310
  - b. if to the Coach: John Zamberlin  
Last known address on file with  
University's Human Resource  
Services
- L. Headings. Each heading contained in this Agreement is for reference purposes only and does not in any way affect the Agreement's meaning or interpretation.
- M. Binding Effect. This Agreement is for the benefit only of the Parties and inures to the benefit of and binds the Parties and their respective heirs, legal representatives, successors and assigns.
- N. Non-Use of Names and Trademarks. The Coach in each case must obtain the University's written consent before using any Mark, except in the course and scope of Coach's official University duties.

- O. No Third Party Beneficiaries. The Agreement has no intended or unintended third party beneficiary.
- P. Entire Agreement; Amendments. This Agreement constitutes the Parties' entire understanding and supersedes any prior agreement or understanding with respect to the same subject matter. An amendment or modification of this Agreement is effective only if in writing, signed by both Parties, and approved by University's Board Trustees.
- Q. Opportunity to Consult with Attorney. The Coach acknowledges that Coach has had an opportunity to consult and review this Agreement with an attorney and has not relied upon the advice of any legal counsel acting on behalf of the University. Accordingly, in all cases, the language of this Agreement is to be construed simply, according to its fair meaning, and not strictly for or against any party.

Signed:

**UNIVERSITY**

**COACH**

\_\_\_\_\_  
Arthur Vailas, President                      Date

\_\_\_\_\_  
Jon Zamberlin                                      Date

Approved by the Board of Trustees, on the \_\_\_\_\_.

**Exhibit A**

Requirements

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) Department policies;
- (e) NCAA rules and regulations; and
- (f) Conference rules and regulations.

**Exhibit B**

**Listing of Employees under Coach's Supervision**

{include each name and title}

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JOHN ZAMBERLIN, HEAD FOOTBALL COACH - MULTI-YEAR CONTRACT CHANGES			
	MODEL CONTRACT SECTION	ISU CONTRACT SECTION	JUSTIFICATION FOR MODIFICATION
1	1.3 Duties	I.D.2 .. Non-Team Activity	Language added clarifying University's right "at any time" to reassign is independent of "for cause" right to terminate or to reassign duties under V.A.1.
2	3.1.1 Regular Compensation	III.B.5 Regular Compensation language added	Additional language specifying courtesy car benefits to Coach through ISU's Courtesy Car Program, subject to availability.
3	3.2 Supplemental Compensation	III.C Supplemental Compensation – increases bonus amounts and adds bonus categories, while clarifying that all depends on acceptable conduct by Coach, assistance, staff and players	Makes all supplemental compensation (not Annual Salary) <u>contingent</u> on Coach's and Personnel's acceptable conduct, and <u>alters</u> supplemental compensation bonus potential according to the following milestones: <ul style="list-style-type: none"> <li>playoff win thresholds (<i>increasing</i> amounts through each playoff win);</li> <li>reaching <i>modified</i> NCAA academic progress metric (from raw score to 4-year percentile ranking) (increased amounts also); and</li> <li>being named conference coach of the year.</li> </ul>
4	3.2.6 Summer Camp Operated by University	III.C.7 Summer Camp Operated by University; language added	University has decided to provide a University-operated summer camp only. Coach has the right to direct net revenues from summer camps to be used to enhance the budget of the Football Program.
5	5.1.1 Termination for Cause	V.A.1.a.vi Additional Grounds - Added a subsection regarding cause for termination (or for suspension/reassignment)	Added language including "failure of Coach to represent the University and its athletic programs positively in public or private forums" as possible cause for employment action.
6	5.2.2 Termination of Coach for Convenience of University	V.A.2.a University termination of Coach for convenience – modified amount due and duration	Modified and added language allowing Coach to receive not only Annual Salary, but also Radio/Television appearance amount, and specifying Coach to be paid until the earlier date of the contract term ending, or Coach finding "reasonably comparable employment."
7	6.16. Opportunity to Consult with Attorney	VI.Q. Opportunity to Consult with Attorney; language added	Additional language added "and has not relied upon the advice of any legal counsel acting on behalf of the University."

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**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
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**SUBJECT**

Second Reading – Amendment to Board Policy Sections II.B.2; II.F.1-2; II.G.1; II.N.

**REFERENCE**

December 2009

Board approved 1<sup>st</sup> Reading

**BACKGROUND/DISCUSSION**

The proposed changes to Board policy accomplish the following:

1. Clarify the broad authority of the institution chief executive officers for personnel matters affecting the institutions. Section II.B.2.b.
2. Clarify specific authority in the chief executive officers to make institutional or unit-wide personnel adjustments, including furloughs and reductions in force, to respond to financial challenges. Sections II.B.2.b
3. Incorporate notice and due process procedures for affected employees. Sections II.B.2.c.
4. Clarify that contract salary is subject to adjustment year to year based on budgets and subject to interim adjustments as part of institutional or unit-wide personnel adjustments made by the CEO's to respond to financial challenges. Sections II.F.1. & 2. (non-faculty exempt) & II.G.1. (Faculty)
5. Clean-up Financial Exigency Policy – remove references to actions that can be taken without a declaration of exigency. Sections II. N.1.; 2.d.; 2.e.; & 7.

**IMPACT**

There is no immediate financial impact on the institutions from these policy changes, rather the changes clarify the various tools available to the chief executive officers of the institutions to address budget challenges caused by such things as general fund gubernatorial holdbacks (pursuant to Idaho Code § 67-3512A) and legislative budget cuts (either current year or out-year). If necessary, these policies would enable an institution to take quick initial action to respond to such financial challenges in order to bridge to a new budget reality.

**ATTACHMENTS**

Attachment 1 – Proposed Revised Policy, Section II B	Page 3
Attachment 2 – Proposed Revised Policy, Section II F	Page 7
Attachment 3 – Proposed Revised Policy, Section II G	Page 13
Attachment 4 – Proposed Revised Policy, Section II N	Page 23

**STAFF COMMENTS AND RECOMMENDATIONS**

Since the December 2009 meeting, the Board Office received comments in opposition to the proposed policy changes from the ISU, UI and LCSC faculty senates. In addition, the Board Office received correspondence voicing comments and concerns from the president of the BSU Faculty Senate, several individual faculty members, and the president of the Higher Education Council,

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Idaho Federation of Teachers, AFL/CIO. Staff reviewed these comments and they were forward to Board members.

Systemwide, the College and Universities have experienced a \$56.5M or 19.8% reduction in State General Funds since FY 2009<sup>1</sup> and additional mid-year and out-year budget cuts are imminent.

These policy revisions clarify the authority and budgeting tools the institutional CEOs have to manage budget holdbacks and reductions. In so doing, these policies could serve to protect faculty and staff from the vagaries of a declaration of financial exigency which places everything on the table in order to maintain operations in times of a financial crisis. Financial exigency can result in the elimination of positions and programs, and could jeopardize an institution's bond rating resulting in increased financial hardship to the institution.

Board staff is of the opinion that these Policy changes would enable institutions to manage and mitigate financial, workforce, and programmatic exposure risk in times when an institution's financial position has been severely compromised by reduced appropriations. No changes are recommended. Staff recommends approval of the second reading of Board Policies II.B.2; II.F.1 & 2. II.G.1; and II.N. as submitted.

**BOARD ACTION**

A motion to approve the second reading of the proposed amendments to Board Policies II.B.2; II.F.1 & 2., II.G.1; and II.N. as submitted.

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

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<sup>1</sup> Difference between the FY 2009 Original Appropriation of \$285,151,500 and the year-to-date FY10 appropriation of \$228,081,400 (reflects removal of \$10M one-time and first holdback).

**GOVERNING POLICIES AND PROCEDURES**

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

**Subsection: B. Appointment Authority and Procedures**

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**B. Appointment Authority and Procedures**

1. Nothing herein may be construed to be in limitation of the powers of the Board as defined by Sections 33-3006, 33-3104, 33-2806, and 33-4005, Idaho Code, or as otherwise defined in the Idaho Constitution or Code.
2. Delegation of Authority
  - a. The Board delegates all authority for personnel management not specifically retained to the executive director and the chief executive officers consistent with the personnel policies and procedures adopted by the Board. In fulfilling this responsibility, the executive director and chief executive officers, or their designees, may exercise their authority consistent with these policies and procedures. Provided, however, that the Board retains the authority for taking final action on any matter so identified anywhere in these policies and procedures.
  - b. Within the general delegation of authority in the preceding paragraph a. above, the chief executive officers shall have the authority to manage, supervise and control the personnel and human resources of the institutions and agencies. Organizational structure, duty assignments, FTE count, place of work, shift placement, salaries, work hour adjustments, benefit determinations, reductions in force and all similar and related work place decisions are the prerogative of the chief executive officers except or unless as limited by other applicable provisions of Board or institutional policy.
  - c. Without limiting the general description of b. above, the authority delegated to each chief executive officer includes the authority, in the chief executive officer's discretion, to reduce expenditures to respond to financial challenges (without a financial exigency declaration by the Board) and to maintain sound fiscal management. In such cases, the chief executive officer may take employment actions, as provided in applicable institutional policy, which are uniform across the entire institution, or uniform across institution budgetary units, but may not include actions requiring a financial exigency declaration by the Board. Such actions may include work hour adjustments such as furloughs or other unpaid leave as long as such are uniform across budgetary units or uniformly tiered as applied to certain salary levels or classifications. Work hour adjustments may be pro-rated based on annual salary levels to equitably reduce the financial hardship of the adjustments on lower level employees. Such actions may include reductions in force (not including tenured faculty members) when such reductions can be accomplished without shortening the term of an existing annual employment contract.

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- d. In implementing any such actions described in the preceding paragraph c. above, the institution shall seek the input from the faculty, non-classified staff and classified staff employee groups. Such groups will be given at least twenty-one (21) calendar days to provide their input on the proposed actions as provided for in the policies of the institution. The institution shall, once such input is taken and considered by the chief executive officer, establish procedures that provide for at least thirty (30) days written notice prior to the effective date of the action and an opportunity for an affected employee to be heard. The notice must include the effective date of the employment action, a statement of the basis for the employment action, and a description of the process to be heard. Such process must be prompt, expeditious, and fair. The employee may contest the action only based on whether the action, with respect to that employee, violates the procedural requirements of this policy, applicable institutional policy or constitutional or statutory protections for that employee. The employee may not challenge the chief executive officer's determination that a reduction in budgetary expenditures is necessary, nor contest the chief executive officer's chosen means of addressing the reduction need, unless such means violate constitutional or statutory protections for the employee.

**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.

**GOVERNING POLICIES AND PROCEDURES**

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

- b. The initial appointment of all employees to any type of position at a salary that is equal to or higher than 75% of the chief executive officer's annual salary.
- c. The employment agreement of any head coach or athletic director (at the institutions only) longer than one year, and all amendments thereto.
- d. The criteria established by the institutions for initial appointment to faculty rank and for promotion in rank, as well as any additional faculty ranks and criteria as may be established by an institution other than those provided for in these policies (see subsection II. G.) Any exceptions to the approved criteria also require Board approval.

For the procedures established for periodic performance review of tenured faculty members see subsection II. G.

**GOVERNING POLICIES AND PROCEDURES**

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## **F. Policies Regarding Non-classified Employees**

### **1. Employment Terms**

- a. All non-classified employees, except those set forth in Section II.F.1.b. below, serve at the pleasure of the chief executive officer, and may be dismissed at any time, with or without cause, and without notice, at the discretion of the chief executive officer.

### **b. Employment Contracts**

- (1) An institution may provide employment contracts to its non-classified employees. If an institution chooses to offer employment contracts to its non-classified employees, the employment contract must include the period of the appointment, salary, pay periods, position title, employment status and such other information as the institution may elect to include in order to define the contract of employment. Non-classified employees have no continued expectation of employment beyond their current contract of employment.
- (2) Non-classified employees, who serve pursuant to contracts of employment containing a stated salary are not guaranteed such salary in subsequent contracts or appointments, and such salary is subject to adjustment during the contract period due to financial exigency (as provided for in Section II.N of Board Policy) or as provided for in section II.B.2.c of Board Policy.
- (3) Each employee must acknowledge receipt and acceptance of the terms of the employment contract by signing and returning a copy to the institution initiating the offer of appointment. Failure or refusal of the employee to sign and return a copy of the employment contract within the time specified in the contract is deemed to be a rejection of the offer of employment unless the parties have mutually agreed in writing to extend the time. Nothing in this paragraph prohibits the institution from extending another offer to the employee in the event the initial offer was not signed and returned in a timely manner. Any alteration by the employee of the offer is deemed a counter-offer requiring an affirmative act of acceptance by an officer authorized to enter into contracts of employment binding the institution.
- (4) Each contract of employment shall include a statement to the following effect and intent: "The terms of employment set forth in this contract of employment are also subject to the Governing Policies and Procedures of the State Board of Education (or the Board of Regents of the University of Idaho, in the case of University of Idaho), and the policies and procedures of the institution." The contract shall also state that it may be terminated at any time for adequate cause, as defined in Section II.L. of Board Policy, or when the Board declares

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a state of financial exigency, as defined in Section II.N. of Board Policy. The contract shall also state that it may be non-renewed pursuant to Section II.F.5. of Board Policy.

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

**2. Compensation**

- a. Salary – All non-classified employees shall receive a fixed salary. Payment in addition to the fixed salary may be authorized by the chief executive officer and reported to the Board. All initial salaries for non-classified employees are established by the chief executive officer, subject to approval by the Board where applicable. The Board may make subsequent changes for any non-classified employee salary or may set annual salary guidelines and delegates to its executive director authority to review compliance with its annual guidelines. Any annual salary increase outside Board guidelines requires specific and prior Board approval before such increase may be effective or paid to the non-classified employee. With the exception of the chief executive officers, and other positions whose appointment is a reserved Board authority, approval of salaries shall be effective concurrently with Board approval of annual operating budgets for that fiscal year.
- b. Salaries, Salary Increases and other Compensation related items
- (1) Salaries for new appointments to dean, associate/assistant dean, vice president, and president/vice president direct-report positions may not exceed the median rate for such position established by the College and University Professional Association for Human Resources (CUPA), or its equivalent, without prior Board approval.
- (2) Appointments to acting or interim positions shall be at base salary rates no greater than ten percent (10%) more than the appointees' salary rate immediately prior to accepting the interim appointment or ninety-five percent (95%) of the prior incumbent's rate, whichever is greater.
- (3) Overtime Compensation – Non-classified employees earning annual leave at the equivalent rate of two (2) days for each month or major fraction thereof of credited state service are not eligible for either cash compensation or compensatory time off for overtime work. Non-classified employees in positions that are defined as "non-exempt" under the Fair Labor Standards Act earn overtime at a rate of one and one-half (1½) hours for each overtime

hour worked. Other non-classified employees may earn compensatory time off at the discretion of the chief executive officer at a rate not to exceed one (1) hour of compensatory time for each hour of overtime worked.

- (4) Credited State Service - The basis for earning credited state service will be the actual hours paid not to exceed forty (40) per week.
- (5) Pay Periods - All non-classified employees are paid in accordance with a schedule established by the state controller.
- (6) Automobile Exclusion - Unless expressly authorized by the Board, no non-classified employee will receive an automobile or automobile allowance as part of his or her compensation.

### **3. Annual Leave**

- a. Non-classified employees at the institutions, agencies earn annual leave at the equivalent rate of two (2) days per month or major fraction thereof of credited state service. Twelve-month employees employed at the entities named above may accrue leave up to a maximum of 240 hours. An employee who has accrued the maximum will not earn further leave until the employee's use of annual leave reduces the accrual below the maximum.

Non-classified employees in positions which are covered under the Fair Labor Standards Act earn annual leave according to § 67-5334 and are subject to the maximum leave accruals in § 67-5335(2).

- b. Non-classified employees appointed to less than full-time positions earn annual leave on a proportional basis dependent upon the terms and conditions of employment.
- c. Professional Leave - At the discretion of the chief executive officer, non-classified employees may be granted professional leave with or without compensation under conditions and terms as established by the chief executive officer.

### **4. Performance Evaluation**

Each institution or agency must establish policies and procedures for the performance evaluation of non-classified employees, and are responsible for implementing those policies in evaluating the work performance of employees. The purposes of employee evaluations are to identify areas of strength and weakness, to improve employee work performance, and to provide a basis on which the chief executive officers and the Board may make decisions concerning retention, promotion, and merit salary increases. All non-classified employees must be evaluated annually. Any written recommendations that result from a performance

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evaluation must be signed by the appropriate supervisor, a copy provided to the employee and a copy placed in the official personnel file of the employee. Evaluation ratings that result in findings of inadequate performance of duties or failure to perform duties constitute adequate cause as set forth in Section II.L. of Board Policy.

**5. Non-Renewal of Non-classified Contract Employees**

- a. Notice of the decision of the chief executive officer to not renew a contract of employment must be given in writing to the non-classified employee at least sixty (60) calendar days before the end of the existing period of appointment for annual appointments. For appointments of less than one year, the written notice must be at least thirty (30) days prior to the end of the existing period of appointment. Reasons for non-renewal need not be stated. Non-renewal without cause is the legal right of the Board. If any reasons for non-renewal are provided to the employee for information, it does not convert the non-renewal to dismissal for cause and does not establish or shift any burden of proof. Failure to give timely notice of non-renewal because of mechanical, clerical, mailing, or similar error is not deemed to renew the contract of employment for another full term, but the existing term of employment must be extended to the number of days necessary to allow sixty (60) (or thirty days where applicable) calendar days notice to the employee.
- b. Except as set forth in this paragraph, non-renewal is not grievable within the institution nor is it appealable to the Board. However, if an employee presents bona fide allegations and evidence to the chief executive officer of the institution that the non-renewal of the contract of employment was the result of discrimination prohibited by applicable law, the employee is entitled to use the internal discrimination grievance procedure to test the allegation. If the chief executive officer is the subject of the allegations, the employee may present the bona fide allegations and evidence to the Executive Director. The normal internal grievance procedure for discrimination must be used unless changed by mutual consent of the parties. The ultimate burden of proof rests with the employee. The institution is required to offer evidence of its reasons for non-renewal only if the employee has made a prima facie showing that the recommendation of non-renewal was made for reasons prohibited by applicable law. Unless mutually agreed to by the parties in writing, the use of the discrimination grievance procedure will not delay the effective date of non-renewal. Following the discrimination grievance procedures, if any, the decision of the institution, is final, subject to Section II.F.5.c., below.
- c. The non-classified contract employee may petition the Board to review the final action of the institution. Any petition for review must be filed at the Office of the State Board of Education within fifteen (15) calendar days after the employee receives notice of final action. The Board may agree to review the final action, setting out whatever procedure and conditions for review it deems appropriate, or

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it may choose not to review the final action. The fact that a review petition has been filed will not stay the effectiveness of the final action, nor will the grant of a petition for review, unless specifically provided by the Board. Board review is not a matter of right. An employee need not petition for Board review in order to have exhausted administrative remedies for purposes of judicial review. Nothing in this section should be construed as any prohibition against filing a complaint with any appropriate state or federal entity, including but not limited to the Equal Employment Opportunity Commission (EEOC) or the Idaho Human Rights Commission (IHRC).

**6. Tenure**

Non-classified employees are generally not entitled to tenure. Certain, very limited, exceptions to this general rule are found in Subsection G.6 of these personnel policies and procedures.

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**G. Policies Regarding Faculty (Institutional Faculty Only)****1. Letters of Employment**

- a. All faculty employees serve pursuant to employment contracts. The employment contract must include the period of the appointment, salary, pay periods, position title, employment status and such other information as the institution may elect to include in order to define the contract of employment. Non-tenured faculty employees have no continued expectation of employment beyond their current contract of employment. Each faculty employee must acknowledge receipt and acceptance of the terms of the employment contract by signing and returning a copy to the institution initiating the offer of appointment. Failure or refusal of the faculty employee to sign and return a copy of the employment contract within the time specified in the contract is deemed to be a rejection of the offer of employment unless the parties have mutually agreed in writing to extend the time. Nothing in this paragraph prohibits the institution from extending another offer to the employee in the event the initial offer was not signed and returned in a timely manner. Any alteration by the employee of the offer is deemed a counter-offer requiring an affirmative act of acceptance by an officer authorized to enter into contracts of employment binding the institution. Each contract of employment must include a statement to the following effect and intent: "The terms of employment set forth in this letter (contract) of employment are also subject to the Governing Policies and Procedures of the State Board of Education (or the Board of Regents of the University of Idaho, in the case of the University of Idaho), and the policies and procedures of (the institution)."
- b. Term of Appointment - All non-tenured faculty employees have fixed terms of employment. No contract of employment with such an employee may exceed one (1) year without the prior approval of the Board. Employment beyond the contract period may not be legally presumed. Reappointment of a faculty employment contract is subject solely to the discretion of the chief executive officer of the institution, and, where applicable, of the Board.
- c. Non-tenured faculty and tenured faculty, who serve pursuant to contracts of employment or notices (letters) of appointment containing a stated salary are not guaranteed such salary in subsequent contracts or appointments, and such salary is subject to adjustment during the contract period due to financial exigency (as provided for in Section II.N of Board Policy) or as provided for in section II.B.2.c of Board Policy.

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**d. Faculty Rank and Promotion**

- (1) There are four (4) primary faculty ranks at each institution: (a) professor, (b) associate professor, (c) assistant professor, and (d) instructor. Each institution may establish additional faculty ranks, specify the title of each rank, and delineate the requirements for each faculty rank so established. Recommendations for additional faculty ranks must be submitted by the chief executive officer to the Board for approval.
- (2) Faculty rank, including initial appointment to faculty rank and any promotion to a higher rank at an institution, is located in a department or equivalent unit.
- (3) Each institution must establish criteria for initial appointment to faculty rank and for promotion in rank at the institution. Such criteria must be submitted to the Board for approval, and upon approval must be published and made available to the faculty.
- (4) Persons who have made substantial contributions to their fields of specialization or who have demonstrated exceptional scholarship and competence or appropriate creative accomplishment of recognized outstanding quality may be appointed to faculty rank without satisfying established institutional criteria for initial appointment or promotion, provided that the qualifications of such individuals have been reviewed in accordance with institutional procedures and the appointment is recommended by the chief executive officer and approved by the Board.
- (5) A non-classified employee may hold faculty rank in a department or equivalent unit in which rank has previously been established by the institution. A non-classified employee may be granted rank at the time of appointment or subsequent thereto, or may be promoted in rank, if such employee meets the criteria for rank as established by the institution and approved by the Board.

**2. Compensation****a. Salary**

All initial salaries for faculty employees are established by the chief executive officer, subject to approval by the Board where applicable. Payment in addition to regular salaries must be authorized by the chief executive officer and reported to the Board. The Board may make subsequent changes for faculty employee positions or may set annual salary guidelines and delegate to its executive director authority to review compliance with its annual guidelines. Any annual salary increase outside Board guidelines requires specific and prior Board



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approval before such increase may be effective and paid to the employee. With the exception of the chief executive officers, and other positions whose appointment is a reserved Board Authority, approval of salaries shall be effective concurrently with Board approval of annual operating budgets for that fiscal year.

b. Salaries, Increases and other Compensation related items

(1) For purposes of categorizing faculty employees for salary and reporting purposes, the following definition applies: Faculty includes all persons whose specific assignments customarily are made for the purpose of conducting instruction, research, or public service as a principal activity (or activities), and who hold the following academic rank or titles of professor, associate professor, assistant professor, instructor, lecturer, or the equivalent of any of these academic ranks. Report in this category deans, directors, or the equivalents, as well as associate deans, assistant deans, and executive officers of academic departments (chairpersons, heads, or the equivalent) if their principal activity is instructional. Do not include student teaching or research assistants or medical interns or residents. (For reporting purposes, deans, associate deans, and assistant deans are included in the executive/administrative category.)

(2) Credited State Service/Full Time Status - A faculty member employed for an academic year and paid over a twelve-month period will be credited with twelve (12) months of state service. For all benefit status determinations and calculations, faculty members shall be considered full time, year round employees of the employing institution as long as the employee's teaching, research and service duties are commensurate with the full time faculty work load assignment as defined by the employing institution.

(3) Pay Periods - All faculty employees, including those on academic-year appointments, are paid in accordance with a schedule established by the state controller.

(4) Automobile Exclusion - Unless expressly authorized by Board policy, no faculty employee will receive an automobile or automobile allowance as part of his/her compensation.

3. Annual Leave

- a. Only faculty members serving twelve (12) month appointments earn annual leave. Such annual leave shall be earned in the same manner as for non-classified employees.

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**b. Sabbatical Leave****(1) Eligibility**

A sabbatical leave may be granted at the discretion of the chief executive officer to a tenured faculty member (or a professional-technical faculty member) who has completed at least six (6) years of full-time service at an institution. A sabbatical leave may not be awarded to the same faculty member more than once in any six (6) academic years and sabbatical leave time is not cumulative. Sabbatical leave proposals must be submitted, reviewed, and processed according to policies and procedures established at each institution. A sabbatical leave may be used for the purpose of acquiring new professional skills and updating professional skills or conducting research. Sabbatical leave awards are fully dependent on the availability of appropriate funding.

**(2) Term**

The term of a sabbatical leave is either one (1) academic semester at full pay or two (2) semesters at half pay.

**(3) Condition**

Each faculty member who is granted a sabbatical leave must serve at the institution for at least one (1) academic year after completion of the sabbatical unless the chief executive officer approves a waiver of the requirement.

**(4) Report on Sabbatical Leave**

By the end of the first semester following return to the institution from a sabbatical leave, the faculty member must submit a written account of sabbatical activities and accomplishments to the academic vice president.

**(5) Report to the Board**

The chief executive officer must report the names of faculty members awarded sabbatical leaves and a brief statement of the purposes of each sabbatical in their semi-annual report to the Board

**4. Performance Evaluation**

- a. Annual Evaluation - Each year the chair of a department must submit to the dean of the chair's college an evaluation of each faculty member in the department. This evaluation, together with the input of higher administrators, will be used as (1) basis for the final recommendation relative to reappointment, non-

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reappointment, acquisition of tenure, or other personnel action, whichever is appropriate. The chairman must communicate an assessment of strengths and weaknesses to each faculty member evaluated.

- b. Evaluation Criteria - Evaluation of faculty should be made in terms of the individual's effectiveness. Each institution shall publish its criteria for annual evaluation and ensure that all members of the faculty have access to the criteria.
- c. Any written recommendations that result from evaluation of a faculty employee will be given to the employee and a copy will be placed in the employee's file.
- d. Each institution must develop policies, procedures, and measurement instruments to be used in the evaluation by students of faculty teaching effectiveness.

**5. Non-renewal of Non-tenured Faculty Members**

- a. Notice of non-renewal must be given in writing and in accordance with the following standards:
  - (1) First Year Of Service - Not later than March 1 of the first full academic year of service if the appointment is not to be renewed at the end of the academic year; or if a one-year appointment terminates during an academic year and is not to be renewed, at least three (3) months in advance of its termination.
  - (2) Second Year of Service - Not later than December 15 of the second full academic year of service if the appointment is not to be renewed at the end of the academic year; or, if the appointment terminates during an academic year and is not to be renewed, at least six (6) months in advance of its termination.
  - (3) Three (3) Or More Years Of Service – Not later than July 15 preceding the academic year at the end of which the appointment is to be terminated; or, if the appointment terminates during an academic year and is not to be renewed, at least twelve (12) months in advance of its termination.
  - (4) Failure to provide timely notice of non-renewal because of mechanical, clerical, or mailing error does not extend or renew the letter or contract of employment for another term, but the existing term of employment will be extended to provide the employee with a timely notice of non-renewal.
  - (5) Financial Exigency - Notice of non-renewal is not required when the Board has authorized a reduction in force resulting from a declaration of financial exigency and a non-tenured faculty member is to be laid off. In that event, notice of layoff must be given as provided under the policies for reduction in force.

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**b. Request For Review**

(1) Non-renewal is not subject to investigation or review except that the employee may request an investigation or review to establish that written notice was or was not received in accordance with the time requirements set forth in this section. In such cases, the investigation or review will be concerned only with manner and date of notification of non-renewal. The employee must request such investigation or review in writing of the chief executive officer within fifteen (15) days of receipt of the written notice of non-renewal.

(2) Provided, however, that if the non-tenured faculty member presents bona fide allegations and evidence in writing to the chief executive officer of the institution that the non-reappointment was the result of discrimination prohibited by applicable law, the non-tenured faculty member is entitled to use the internal discrimination grievance procedure to test the allegation. In such cases, the same procedures, burden of proof, time limits etc. as set forth for the grievance of non-renewal by non-classified employees shall be used (see subsection F).

c. Non-tenured faculty members who are notified that they will not be reappointed or that the succeeding academic year will be the terminal year of appointment are not entitled to a statement of reasons upon which the decision for such action is based. No hearing to review such a decision will be held.

**6. Tenure**

a. **Tenure Defined** - Tenure is a condition of presumed continuous employment following the expiration of a probationary period and after meeting the appropriate criteria. After tenure has been awarded, the faculty member's service may be terminated only for adequate cause; except in the case of retirement or financial exigency as declared by the Board; in situations where extreme shifts of enrollment have eliminated the justification for a position; or where the Board has authorized elimination or substantial reduction in a program. Tenure status is available only to eligible, full-time institutional faculty members, as defined by the institution. All faculty appointments are subject to the approvals as required in Board policy. Nontenured members of the faculty are appointed to term appointments pursuant to subsection G1. Any commitment to employ a nontenured member of the faculty beyond the period of his or her current term of appointment is wholly ineffective.

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**b. Acquisition of Tenure**

(1) Professional-Technical Faculty hired under the division of professional-technical education prior to July 1, 1993 who were granted tenure may retain tenure in accordance with these policies. Individuals hired under the Division of Professional-Technical education subsequent to July 1, 1993 are hired and employed as nontenure track faculty and will:

- (a) be afforded the right to pursue promotion; and
- (b) be considered and granted an employment contract in accordance with these policies and be subject to continued acceptable performance and/or the needs of the institution; and
- (c) be afforded an opportunity to serve on institutional committees.

(2) Academic faculty members, after meeting certain requirements, established by the employing institution, may acquire tenure. Each institution shall develop policies for the acquisition of tenure that are consistent with this general philosophy and policy statement of the Board. Acquisition of tenure is not automatic, by default or defacto, but requires an explicit judgment, decision, and approval. A faculty member is eligible to be evaluated for the acquisition of tenure after having completed four (4) full years of academic employment at the institution, although tenure may be awarded prior to completion of this initial eligibility period in certain exceptional cases as provided in Board Policy II.G.6.d.4.a). In addition, an academic faculty member must be evaluated for the acquisition of tenure not later than the faculty member's sixth (6th) full academic year of employment at the institution. In certain exceptional cases a faculty member may petition for extension of the timeline for tenure due to extenuating circumstances as provided in Board Policy II.g.6.d.4.b).

c. Notification - An individual eligible for tenure must be informed, by proffered written contract, of appointment or nonappointment to tenure not later than June 30 after the academic year during which the decision is made. In case of denial of tenure, the faculty member must be given a written notice that tenure was denied.

**d. Standards of Eligibility for Tenure**

(1) Annual Appointments - Until the acquisition of tenure, all appointments are made for a period not to exceed one (1) year. Prior to the award of tenure, employment beyond the annual term of appointment may not be legally presumed.

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- (2) Service in Professional Rank - All satisfactory service in any professorial rank may be used to fulfill the time requirement for acquiring tenure. Each institution must develop criteria and rules by which prior service may be evaluated for inclusion in experience necessary for acquiring tenure.
- (3) Service in Instructor Rank - A maximum of two (2) years satisfactory service in the rank of instructor at the institution will be allowed in partial fulfillment of the time requirement in the professorial ranks. Faculty members who hold the rank of instructor may be eligible for tenure status if provided for by the institution even though they teach in fields that have established professorial ranks.
- (4) Exceptional Cases
- (a) Tenure may be awarded prior to completion of the usual eligibility period in certain exceptional cases. In such cases, the burden of proof rests with the individual.
  - (b) Extension of the tenure review period may be granted in certain exceptional cases. In such cases the faculty member must formally request such an extension and indicate the reason for the request. An institution that permits an extension of the tenure review period must include in its policies the procedure a faculty member must follow to request such an extension, and the basis for determining the modified timeline for review.
- e. Evaluation For Tenure - It is expected that the chief executive officer, in granting tenure, will have sought and considered evaluations of each candidate by a committee appointed for the purpose of annual evaluations or tenure status. Such committee must consist of tenured and non-tenured faculty; student representation; and one (1) or more representatives from outside the department. Each member of the committee has an equal vote on all matters. The committee must give proper credence and weight to collective student evaluations of faculty members, as evidenced by an auditing procedure approved by the chief executive officer. The recommendation of the committee will be forwarded in writing through appropriate channels, along with written recommendations of the department chairperson or unit head, dean, and appropriate vice president, to the chief executive officer, who is responsible for making the final decision.
- f. Award of Tenure - The awarding of tenure to an eligible faculty member is made only by a positive action of the chief executive officer of the institution. The president must give notice in writing to the faculty member of the approval or denial of tenure. Notwithstanding any provisions in these policies to the contrary, no person will be deemed to have been awarded tenure because notice is not given

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

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

(2) Review standards - Each institution may establish its own internal review standards subject to approval by the Board. Absent such institutional standards, the institution must use the following standards.

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

(3) Exception for Associate Professors in the Promotion Process - Generally, the promotion from the rank of associate professor to full professor is considered no earlier than the fifth full year after attaining the rank of associate professor, which is generally contemporaneous with the granting of tenure. In such cases, if review for promotion to full professor is scheduled during the fifth, sixth or seventh full year after the award of tenure then the promotion review may, if it meets substantially similar criteria and goals of the post tenure review, take the place of the periodic performance review described here.

(4) Termination of employment - If, following a full and complete review, a tenured faculty member's performance is judged to have been

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unsatisfactory or less than adequate during the period under review, the chief executive officer may initiate termination of employment procedures for the faculty member. In other words, an unsatisfactory or less than adequate performance rating shall constitute adequate cause for dismissal.

- h. Dismissal for Adequate Cause - Tenured faculty members may be dismissed for adequate cause as provided for in Subsection L of this Section.

- i. Tenure for Academic Administrators

(1) "Academic administrators," for purposes of this topic, means the chief academic officers of the Office of the State Board of Education and the institutions and the deans and department chairs and their associates/assistants of the academic units of the institutions, and shall not include persons occupying other administrative positions.

(2) An employee with tenure in an academic department or equivalent unit who is appointed to an academic administrator position retains tenure in that department or equivalent unit

(3) An individual hired for or promoted to an academic administrator may be considered for a tenured faculty rank in the appropriate department or equivalent unit. Such consideration is contingent upon approval by the institution's president.

(4) Upon termination of employment as an academic administrator, an employee with tenure may, at his or her option, return to employment in the department or equivalent unit in which he or she holds tenure unless such employee resigns, retires, or is terminated for adequate cause.

(5) An individual hired for a non-academic administrator position from outside the institution will not be considered for tenured faculty rank in conjunction with such appointment. However, he or she may be granted an adjunct faculty appointment, upon the recommendation of the appropriate department and dean and with the approval of the provost or chief academic officer and president, if the individual will teach and otherwise contribute to that department.

(6) Notwithstanding the above, each administrative employee who is granted tenure shall be reviewed in the same manner as tenured faculty

- j. Terminal Contract of Employment - If a faculty member is not awarded tenure, the chief executive officer must notify the faculty member of the decision not to recommend tenure and may, at his or her discretion, either issue to the



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- faculty member a contract for a terminal year of employment, or, at the sole discretion of the chief executive officer, issue to the faculty member contracts of employment for successive periods of one (1) year each. Such appointment for faculty members not awarded tenure must be on an annual basis, and such temporary appointments do not vest in the faculty member any of the rights inherent in tenure and there shall be no continued expectation of employment beyond the annual appointment.
- k. When authorized by the chief executive officer, or his or her designee, the year in which the tenure decision is made may be the terminal year of employment.
  - l. Effect of lapse in service, transfer, reassignment, reorganization, and administrative responsibilities.
    - (1) A non-tenured faculty member who has left the institution and is subsequently reappointed after a lapse of not more than three (3) years may have his or her prior service counted toward eligibility for the award of tenure. Eligibility for the award of tenure must be clarified in writing before reappointment. A tenured faculty member who has left the institution and is subsequently reappointed after a lapse of not more than three (3) years must have tenure status clarified in writing by the president or his designee before appointment. The faculty member may be reappointed with tenure, or may be required to serve additional years before being reviewed for tenure status.
    - (2) Before a non-tenured faculty member holding academic rank is moved from one position in the institution to another, the member must be informed in writing by the academic vice president, after consultation with the receiving department, as to the extent to which prior service may count toward eligibility for tenure status.
    - (3) No faculty member's tenure in a discipline may be adversely affected by the reorganization of the administrative structure. A faculty member's tenure is not affected by reassignment of administrative responsibilities.
    - (4) When a tenured faculty member is serving as department chairman, college dean, or in some other administrative or service capacity, retention of membership, academic rank, and tenure in the subject-matter department or similar unit is maintained. Should the administrative or service responsibilities terminate, the member takes up regular duties in the discipline within which membership, academic rank, and tenure was retained.

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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 or institutions under its governance, it may become necessary to curtail, modify, or eliminate some of the programs of the agencies or institutions 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 or institutions. As used here, “financial exigency” means a demonstrably bona fide financial crisis that adversely affects an agency or institution 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 addresses potential 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) the closure, relocation, or discontinuance of any programs, units, or activities; or (3) any combination thereof.

This subsection N does not apply to the organization or reorganization of the institutions or agencies 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 or agencies, including the authority to take certain employment actions, as provided in section II.B.2.b. of the Board’s Governing Policies and Procedures, either independently or, in response to, a declared financial exigency. 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.

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- 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 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 or institution 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 or agency, 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.
  - d. 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.

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- e. A financial exigency layoff or 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 or institution to another:

- (1) By entire entity or across an entire agency or institution; or

- (2) By subunit within an agency or institution, 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 or institution; 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

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 or agencies. 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 or institution. 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

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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 or institution 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 or institution under its governance to the following minimum time for written notice of layoff:
  - (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 or agencies 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

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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 or institution, 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 or agencies 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), 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 or agency 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 or agency. 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:

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- (i) Whether the agency or institution 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 or agencies. 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.

- (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



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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.
- (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. 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

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procedural rights as any other layoff pursuant to a financial exigency. Provided, 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.