

**STATE BOARD OF EDUCATION SPECIAL MEETING  
December 18, 2014  
Office of the State Board of Education  
Len B. Jordan Building  
650 W State Street, 3<sup>rd</sup> Floor  
Boise, Idaho**



**Teleconference Number:** (877)322-9654  
**Public Participation Code:** 896861

**Thursday, December 18, 2014, 9:00 a.m., Mountain Time**

**PLANNING, POLICY AND GOVERNMENTAL AFFAIRS**

1. Career Ladder Legislation

**AUDIT**

1. Presentation of audit findings by the Board's external auditor

**BUSINESS AFFAIRS & HUMAN RESOURCES**

**Section I - Human Resources**

1. Boise State University – Multi-Year Employment Agreement – Women's Volleyball Head Coach
2. Boise State University - Multi-Year Employment Agreement – Women's Basketball Head Coach
3. Idaho State University - Multi-Year Employment Agreement – Men's Football Head Coach
4. Idaho State University - Extension to Multi-Year Employment Agreement – Athletic Director

**Section II- Finance**

1. Amendment to Board Policy-Section V.R.- Establishment of Fees – Second Reading
2. Boise State University- License Agreement to Elsevier
3. University of Idaho – 2015 Bond Refunding
4. Opportunity Scholarship – Maximum Award Amount

**DEPARTMENT OF EDUCATION**

1. Superintendent's Update
2. ISAT Achievement Level Scores (Cut Scores)
3. IDAPA 08.02.03.111.06.j – Grade 9 Assessment - Waiver
4. Reading Literacy Task Force Recommendations
5. Special Education Manual

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<b>TAB</b>	<b>DESCRIPTION</b>	<b>ACTION</b>
<b>1</b>	<b>CAREER LADDER LEGISLATION</b>	Motion to Approve

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**SUBJECT**

Legislation – Career Ladder Amendment

**REFERENCE**

June 2014	The Board approved legislative ideas to be submitted through the Governor's Executive Agency Legislation process for the 2015 Session.
October 2014	The Board approved nine (9) pieces of legislation including proposed Career Ladder Legislation
November 2014	The Board approved a pending rule on teacher certification to implement two tiers of certification.

**BACKGROUND/ DISCUSSION**

In 2013 the Governor's Task Force for Improving Education recommended the state move to "a continuum of professional growth and learning that is tied to [teacher] licensure." Movement through the system should be accomplished through the use of performance measures, including evaluations based on the state's framework for teaching and a candidate's effectiveness in impacting student achievement. The recommendations outlined the initial framework of a three (3) tiered system encompassing an initial three (3) year certificate renewable one time for a total of six (6) years; a five (5) year renewable professional level certificate; and a five (5) year renewable master level certificate. In conjunction with this recommendation, the Task Force recommended Idaho move to a funding model that would tie a district's salary-based apportionment to the certification level of an educator, rather than the current apportionment model based on years of service and education attainment.

Following the completion of the Task Force's work, the Board convened a number of subcommittees to work on the implementation of the Task Force's recommendations. The Career Ladder/Tiered Licensure Committee met from April through September and brought forward recommendations regarding the details of the tiered certification model. The Board promulgated administrative rules implementing the committee's recommendations and approved legislative language tying a career ladder allocation model to the three certification levels specified in the proposed administrative rule. In response to public input, conducted as part of the rulemaking process, the final pending rule approved by the Board included only two (2) certification levels and removed performance criteria from the renewable professional certification requirements as originally recommended. These changes in the administrative rule necessitate changes to the original legislative proposal approved by the Board at the October 2014 Board meeting.

The proposed changes to the legislation will separate the career ladder from the teacher certification in that the performance and measurable student achievement criteria will be used for movement on the career ladder but will not impact renewal

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of a professional teaching certificate. The specific criteria for movement on the career ladder are outlined in Attachment 2.

**ATTACHMENT**

Attachment 1 – Career Ladder Legislation	Page 3
Attachment 2 – Career Ladder Framework	Page 16
Attachment 3 – Potential Fiscal Impact	Page 26

**IMPACT**

Approval of the amendments will bring the legislative proposal into alignment with the changes made to the administrative rule.

**STAFF COMMENTS AND RECOMMENDATIONS**

Staff recommends approval.

**BOARD ACTION**

I move to approve the proposed legislation in substantial conformance to the form submitted as attachments 1 and to authorize the Executive Director to make additional changes as necessary as the legislation moves forward through the Governor's legislative process.

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

TITLE 33  
EDUCATION  
CHAPTER 10  
FOUNDATION PROGRAM -- STATE AID -- APPORTIONMENT

33-1001. Definitions. The following words and phrases used in this chapter are defined as follows:

(1) "Administrative schools" means and applies to all elementary schools and kindergartens within a district that are situated ten (10) miles or less from both the other elementary schools and the principal administrative office of the district and all secondary schools within a district that are situated fifteen (15) miles or less from other secondary schools of the district.

(2) "Administrative staff" hold an administrator certificate and are employed as a superintendent, an secondary or elementary school principal, or are assigned administrative duties over and above those commonly assigned to teachers.

(23) "Average daily attendance" or "pupils in average daily attendance" means the aggregate number of days enrolled students are present, divided by the number of days of school in the reporting period; provided, however, that students for whom no Idaho school district is a home district shall not be considered in such computation.

(34) "Elementary grades" or "elementary average daily attendance" means and applies to students enrolled in grades one (1) through six (6) inclusive, or any combination thereof.

(5) "Career ladder" means the compensation table used for determining the allocations districts receive for instructional staff based on specific performance criteria and is made up of a residency compensation rung, professional compensation rung and master compensation rung.

(6) "Compensation rung" means the rung on the career ladder that corresponds with the certificate and compensation level performance criteria.

(47) "Elementary schools" are schools that serve grades one (1) through six (6) inclusive, or any combination thereof.

(58) "Elementary/secondary schools" are schools that serve grades one (1) through twelve (12) inclusive, or any combination thereof.

(69) "Homebound student" means any student who would normally and regularly attend school, but is confined to home or hospital because of an illness or accident for a period of ten (10) or more consecutive days.

(10) "Instructional staff" are involved in the direct instruction of a student or group of students and hold an Idaho residency certificate, or Idaho professional certificate.

(711) "Kindergarten" or "kindergarten average daily attendance" means and applies to all students enrolled in a school year, less than school year, or summer kindergarten program.

(12) "Master compensation rung performance criteria" means:

(a) Instruction staff meet the profession compensation performance criteria; and

(b) Receive the following ratings on the Idaho framework for teaching evaluation:

(i) No components marked as basic or unsatisfactory

(ii) Six (6) or more components marked as distinguished; and

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(b) Sixty (60) percent or more of their students have met their measurable student achievement targets.

(13) "Performance criteria" means the standards specified for instructional staff to evidence teaching proficiency for a given compensation rung.

(14) "Professional compensation rung performance criteria" means:

(a) Instructional staff achieve the following on the state framework for teaching evaluation; a score of proficient or higher on eighteen (18) or more components; no more than four (4) components ranked as basic; and no components ranked as unsatisfactory; and

(b) Demonstrate the majority of their students have met their measurable student achievement targets as defined in the state teacher certification requirements.

(815) "Public school district" or "school district" or "district" means any public school district organized under the laws of this state, including specially chartered school districts.

(16) "Pupil service staff" provide services to students but are not involved in direct instruction of those students, including staff holding a Pupil Personnel Services Certificate.

(917) "Secondary grades" or "secondary average daily attendance" means and applies to students enrolled in grades seven (7) through twelve (12) inclusive, or any combination thereof.

(4018) "Secondary schools" are schools that serve grades seven (7) through twelve (12) inclusive, or any combination thereof.

(4120) "Separate elementary school" means an elementary school ~~which measured from itself, traveling on an all-weather road, is situated~~ located more than ten (10) miles ~~distance on an all-weather road~~ from both the nearest elementary school and elementary/secondary school serving like grades within the same school district and from the location of the office of the superintendent of schools of such district, or from the office of the chief administrative officer of such district, if the district employs no superintendent of schools.

(4221) "Separate kindergarten" means a kindergarten ~~which measured from itself, traveling on an all-weather road, is situated~~ located more than ten (10) miles ~~distance on an all-weather road~~ from both the nearest kindergarten school within the same school district and from the location of the office of the superintendent of schools of such district, or from the office of the chief administrative officer of such district, if the district employs no superintendent of schools.

(4322) "Separate secondary school" means any secondary school ~~which is~~ located more than fifteen (15) miles ~~by on~~ an all-weather road from any other secondary school and elementary/secondary school serving like grades operated by the district.

(4423) "Support program" means the educational support program as described in section [33-1002](#), Idaho Code, the transportation support program described in section [33-1006](#), Idaho Code, and the exceptional education support program as ~~provided~~ described in section [33-1007](#), Idaho Code.

(4524) "Support unit" means a function of average daily attendance used in the calculations to determine financial support provided the public school districts.

(4625) "Teacher" means any person employed in a teaching, instructional, supervisory, educational administrative or educational and scientific capacity in any

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school district. In case of doubt the state board of education shall determine whether any person employed requires certification as a teacher.

33-1004. Staff allowance. For each school district, a staff allowance shall be determined as follows:

(1) Using the daily attendance reports that have been submitted for computing the February 15 apportionment of state funds as provided in section [33-1009](#), Idaho Code, ~~determine~~calculate the total support units for the district in the manner provided in section [33-1002](#)(6)(a), Idaho Code;

(2) Determine the instructional staff allowance by multiplying the support units by ~~1.40~~1.40. A district must demonstrate that it actually employs the number of certificated instructional staff allowed, except as provided in subsection (5)(f) and (g) of this section. If the district does not employ the number allowed, the staff allowance shall be reduced to the actual number employed, except as provided in subsection (5)(f) and (g) of this section;

[\(3\) Determine the pupil service staff allowance by multiplying the support units by 0.1;](#)

~~(34)~~ Determine the administrative staff allowance by multiplying the support units by .075;

~~(45)~~ Determine the classified staff allowance by multiplying the support units by .375;

~~(56)~~ Additional conditions governing staff allowance:

(a) In determining the number of staff in subsections (2), (3) and (4) of this section, a district may contract separately for services to be rendered by nondistrict employees and such employees may be counted in the staff allowance. A "nondistrict employee" means a person for whom the school district does not pay the employer's obligations for employee benefits. When a district contracts for the services of a nondistrict employee, only the salary portion of the contract shall be allowable for computations.

(b) If there are circumstances preventing eligible use of staff allowance to which a district is entitled as provided in subsections (2) and (3) of this section, an appeal may be filed with the state department of education outlining the reasons and proposed alternative use of these funds, and a waiver may be granted.

(c) For any district with less than forty (40) support units:

(i) The instructional staff allowance shall be calculated applying the actual number of support units. If the actual instructional staff employed in the school year is greater than the instructional staff allowance, then the instructional staff allowance shall be increased by one-half (1/2) staff allowance; and

(ii) The administrative staff allowance shall be calculated applying the actual number of support units. If the actual administrative staff employed in the school year is greater than the administrative staff allowance, then the administrative staff allowance shall be increased by one-half (1/2) staff allowance.

(iii) Additionally, for any district with less than twenty (20) support units, the instructional staff allowance shall be calculated applying the actual number of support units. If the number of instructional staff employed in the school year is greater than the instructional staff allowance, the staff allowance shall be increased as provided in

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subparagraphs (i) and (ii) of this paragraph, and by an additional one-half (1/2) instructional staff allowance.

(d) For any school district with one (1) or more separate secondary schools serving grades nine (9) through twelve (12), the instructional staff allowance shall be increased by two (2) additional instructional staff allowances for each such separate secondary school.

(e) Only instructional, pupil service, and administrative staff and classified personnel compensated by the school district from the general maintenance and operation fund of the district, shall be included in the calculation of staff allowance or in any other calculations based upon staff, including determination of the experience and education multiplier, the reporting requirements, or the district's salary-based apportionment calculation. No food service staff or transportation staff shall be included in the staff allowance.

(f) A district may utilize up to fifteen percent (15%) of the moneys associated with positions funded pursuant to subsection (2) of this section to pay another school district or public charter school for instructional services or to defray the cost of providing virtual education coursework, including virtual dual credit coursework, without a reduction in the number of funded positions being imposed.

(g) A district may employ nine and one-half percent (9.5%) fewer positions than funded pursuant to subsection (2) and (3) of this section, without a reduction in the number of funded positions being imposed. Beginning in fiscal year 2016, this figure shall be reduced by one percent (1%) each year for each school district in which the average class size, as determined from prior fiscal year data reported to the state department of education, was at least one (1) student greater than the statewide average class size. The state department of education shall report to the legislature every February, beginning in 2015, on the reductions scheduled to take place in this figure, by school district, in the ensuing fiscal year.

(6) In the event that the staff allowance in any category is insufficient to meet accreditation standards, a district may appeal to the state board of education, demonstrating the insufficiency, and the state board may grant a waiver authorizing sufficient additional staff to be included within the staff allowance to meet accreditation standards. Such a waiver shall be limited to one (1) year, but may be renewed upon showing of continuing justification.

(7) A district may utilize a portion of the instructional staff allowance provided for in this section for kindergarten teachers to visit the parents or guardians of students during the first week of the kindergarten school year. Such visits may take place at school, at the student's home or at another location agreed to by the teacher and parents or guardians. The purpose of such visits is to help strengthen the working relationship between the teacher, the parents or guardians, and the student. The visits should be used as an opportunity to help establish the teacher's expectations of the student. The visit should also provide an opportunity for the parents or guardians to explain their expectations. The amount of moneys to be expended for such visits by the district may not exceed the amount equal to one (1) week of instructional staff allowance computed for kindergarten instructors in the district.

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33-1004A. Experience and education multiplier. Each instructional pupil service and administrative staff position shall be assigned an appropriate multiplier based upon the following table:

**EXPERIENCE AND EDUCATION**

Years	BA	BA + 12	BA + 24	MA	MA + 12	MA + 24	MA + 36
				BA + 36	BA + 48	BA + 60	ES/DR
0	1.00000	1.03750	1.07640	1.11680	1.15870	1.20220	1.24730
1	1.03750	1.07640	1.11680	1.15870	1.20220	1.24730	1.29410
2	1.07640	1.11680	1.15870	1.20220	1.24730	1.29410	1.34260
3	1.11680	1.15870	1.20220	1.24730	1.29410	1.34260	1.39290
4	1.15870	1.20220	1.24730	1.29410	1.34260	1.39290	1.44510
5	1.20220	1.24730	1.29410	1.34260	1.39290	1.44510	1.49930
6	1.24730	1.29410	1.34260	1.39290	1.44510	1.49930	1.55550
7	1.29410	1.34260	1.39290	1.44510	1.49930	1.55550	1.61380
8	1.34260	1.39290	1.44510	1.49930	1.55550	1.61380	1.67430
9	1.39290	1.44510	1.49930	1.55550	1.61380	1.67430	1.73710
10	1.39290	1.49930	1.55550	1.61380	1.67430	1.73710	1.80220
11	1.39290	1.49930	1.55550	1.61380	1.73710	1.80220	1.86980
12	1.39290	1.49930	1.55550	1.61380	1.73710	1.86980	1.93990
13 or more	1.39290	1.49930	1.55550	1.61380	1.73710	1.86980	2.01260

In determining the experience factor, the actual years of certificated service for pupil service staff, or teaching and administrative service for administrator certificate holders in a public school, in an accredited private or parochial school, or beginning in the 2005-06 school year and thereafter in an accredited college or university shall be credited.

In determining the education factor, only credits earned after initial certification, based upon a transcript on file with the teacher certification office of the state department of education, earned at an institution of higher education accredited by a body recognized by the state board of education ~~or a regional accrediting association,~~ shall be allowed. provided however, that successful completion of the state approved Teachscape Focus evaluation training and proof of proficiency shall be counted as up to three (3) transcribed credits for determination of the education factor and meeting recertification requirements. ~~Instructional staff whose initial certificate is an occupational specialist certificate shall be treated as BA degree prepared instructional staff. Credits earned by such occupational specialist instructional staff after initial certification shall be credited toward the education factor.~~

In determining the statewide average multiplier for instructional pupil service staff, no multiplier in excess of 1.59092 shall be used. If the actual statewide average multiplier for instructional staff, as determined by this section, exceeds 1.59092, then each school district's instructional staff multiplier shall be multiplied by the result of 1.59092 divided by the actual statewide average multiplier for instructional staff.

In determining the statewide average multiplier for administrative staff, no multiplier in excess of 1.86643 shall be used. If the actual statewide average multiplier



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for administrative staff, as determined by this section, exceeds 1.86643, then each school district's administrative staff multiplier shall be multiplied by the result of 1.86643 divided by the actual statewide average multiplier for administrative staff.

New Section:

33-1004B. Effective July 1, 2015, all existing instructional staff shall be placed in a cohort on the career ladder that corresponds with the next higher allocation amount than is currently received by the district, based on the experience and education index pursuant to section 33-1004A Idaho code, as applied in fiscal year 2015. For each year between July 1, 2015 and June 30, 2019, those instructional staff will move one cell on the professional compensation rung or the master compensation rung, as applicable, each year they are employed by a district and meet the applicable performance criteria for the compensation rung and implementation year.

(1) Instructional staff who are in their first year of holding a residency certificate shall be placed in the first cell of the residency compensation rung and shall move on cell on the residency for each year they hold a residency certificate thereafter, for up to three years.

(2) Instructional staff new to teaching in Idaho and holding a certificate from a state other than Idaho and approved to teach in Idaho will be placed into the cohort of instructional staff on the career ladder table equivalent to their experience and education pursuant to section 33-1004A, Idaho code, as applied in fiscal year 2015.

(3) In addition to the allocation amount specified for the applicable cell on the career ladder, school districts shall receive an additional allocation amount for instructional staff holding a professional certificate who have acquired additional education, and meet the professional compensation rung performance criteria for a given year. Additional allocations are:

(a) For Instructional staff holding a professional certificate and a baccalaureate degree and 24 or more credits, \$2,000 per fiscal year.

(b) For instructional staff holding a professional certificate and a master degree, \$3,500 per fiscal year.

(c) For instructional staff holding a professional certificate and a doctorate, \$6,000 per fiscal year.

(d) Instructional staff whose initial certificate is an occupational specialist certificate shall be treated as BA degree prepared instructional staff. Credits earned by such occupational specialist instructional staff after initial certification shall be credited toward the education factor.

(e) In determining the additional education allocation amount, only credits and degrees earned after initial certification and July 1, 2015, based upon a transcript on file with the teacher certification office of the state department of education, earned at an institution of higher education accredited by a body recognized by the state board of education, shall be allowed. All credits and degrees earned must be in a relevant pedagogy or content area as determined by the state department of education. Education allocation amounts are not cumulative.

Effective July 1, 2015 through June 30, 2016, the allocation shall be:



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<u>Base Allocation-</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>9</u>	<u>10</u>
<u>Residency/Professional</u>	<u>\$32,800</u>	<u>\$33,600</u>	<u>\$34,422</u>							
<u>Professional</u>	<u>\$36,398</u>	<u>\$37,610</u>	<u>\$38,661</u>	<u>\$39,950</u>	<u>\$41,082</u>	<u>\$42,454</u>	<u>\$43,671</u>	<u>\$45,134</u>	<u>\$47,004</u>	<u>\$47,803</u>
<u>Master</u>	0	0	0	0	0	0	0	0	0	0

Effective July 1, 2016 through June 30, 2017, the allocation shall be:

<u>Base Allocation-</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>9</u>	<u>10</u>
<u>Residency/Professional</u>	<u>\$34,600</u>	<u>\$35,450</u>	<u>\$36,317</u>							
<u>Professional</u>	<u>\$39,049</u>	<u>\$40,208</u>	<u>\$40,996</u>	<u>\$42,213</u>	<u>\$43,061</u>	<u>\$44,341</u>	<u>\$45,253</u>	<u>\$46,601</u>	<u>\$47,583</u>	<u>\$48,602</u>
<u>Master</u>	0	0	0	0	0	0	0	0	0	0

Effective July 1, 2017 through June 30, 2018, the allocation shall be:

<u>Base Allocation-</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>9</u>	<u>10</u>
<u>Residency</u>	<u>\$36,400</u>	<u>\$37,300</u>	<u>\$38,211</u>							
<u>Professional</u>	<u>\$41,699</u>	<u>\$42,805</u>	<u>\$43,330</u>	<u>\$44,475</u>	<u>\$45,041</u>	<u>\$46,227</u>	<u>\$46,836</u>	<u>\$48,067</u>	<u>\$48,722</u>	<u>\$49,402</u>
<u>Master</u>	0	0	0	0	0	0	0	0	0	0

Effective July 1, 2018 through June 30, 2019, school districts shall receive an allocation for instructional staff based on instructional staff position on the career ladder as follows:

(1) Instructional staff in their first year of holding a professional certificate shall be placed in the first cell of the professional compensation rung.

(2) Instructional staff previously placed within a cohort shall continue to move with their cohort unless they have failed to meet the professional compensation rung performance criteria for the previous three (3) years. Allocations to districts for instructional staff who have failed to meet the professional compensation rung performance criteria for the previous three (3) years shall be the same as the previous year.

(3) Instructional staff holding a professional certificate who have a minimum of eight (8) years certificated experience, and have met the master compensation rung performance criteria for the previous three (3) years and have not been placed on a district performance improvement plan or probation in the previous three (3) years, shall be placed in the first cell of the master compensation rung.

Effective July 1, 2018 through June 30, 2019, the allocation shall be:

<u>Base Allocation-</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>9</u>	<u>10</u>
<u>Residency</u>	<u>\$38,200</u>	<u>\$39,150</u>	<u>\$40,106</u>							
<u>Professional</u>	<u>\$44,350</u>	<u>\$45,403</u>	<u>\$45,665</u>	<u>\$46,738</u>	<u>\$47,020</u>	<u>\$48,114</u>	<u>\$48,418</u>	<u>\$49,534</u>	<u>\$49,861</u>	<u>\$50,201</u>
<u>Master</u>	<u>\$52,800</u>	0	0	0	0	0	0	0	0	0

Effective July 1, 2019 through June 30, 2020, school districts shall receive an allocation for instructional staff based on instructional staff position on the career ladder as follows:

(1) Instructional staff in their first year of holding a professional certificate shall be placed in the first cell of the professional compensation rung.

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(2) Instructional staff previously placed within a cohort shall continue to move one cell on the applicable rung with their cohort unless they have failed to meet the professional compensation rung performance criteria for three (3) of the previous four (4) years. Allocations to districts for instructional staff who have failed to meet the professional compensation rung performance criteria for three (3) of the previous four (4) years shall be the same as the previous year.

(3) Instructional staff holding a professional certificate and who have a minimum of eight (8) years certificated experience and have met the master compensation rung performance criteria for three (3) of the previous four (4) years, including the fourth (4<sup>th</sup>) year; and have not been placed on a district performance improvement plan or probation in the past four (4) years, shall be placed in the first cell of the master compensation rung.

Effective July 1, 2019 through June 30, 2020 the allocation shall be:

<u>Base Allocation-</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
<u>Residency</u>	<u>\$40,000</u>	<u>\$41,000</u>	<u>\$42,000</u>	<u>0</u>	<u>0</u>
<u>Professional</u>	<u>\$47,000</u>	<u>\$48,000</u>	<u>\$49,000</u>	<u>\$50,000</u>	<u>\$51,000</u>
<u>Master</u>	<u>\$54,000</u>	<u>\$55,000</u>	<u>\$56,000</u>	<u>\$57,000</u>	<u>\$58,000</u>

33-1004B. Effective July 1, 2020, school districts shall receive an allocation for instructional staff based on instructional staff position on the career ladder as follows:

(1) Instructional staff who are in their first year of holding a residency certificate shall be placed in the first cell of the residency compensation rung and shall move one cell on the residency compensation rung for each year they hold a residency certificate thereafter, for up to three years.

(2) Instructional staff in their first year of holding a professional certificate shall be placed in the first cell of the professional compensation rung.

(3) Instructional staff on the professional compensation rung who meet the performance criteria for three (3) of the previous (5) years, one (1) of which must be during the fourth (4<sup>th</sup>) or fifth (5<sup>th</sup>) year, shall move one cell for each year of experience thereafter, for up to five years. Allocations for instructional staff who do not meet the professional compensation rung performance criteria for three (3) of the previous five (5) years, one (1) of which must be during the fourth (4<sup>th</sup>) or fifth (5<sup>th</sup>) year, shall remain at the previous fiscal year allocation level.

(4) Instructional staff holding a professional certificate who meet the master compensation rung performance criteria for three (3) of the previous five (5) years, one (1) of which must be during the fourth (4<sup>th</sup>) or fifth (5<sup>th</sup>) year; and have not been placed on a district performance improvement plan or probation in the previous five (5) years, shall be placed in the first cell of the master compensation rung.

(5) Instructional staff previously placed on the master compensation rung who meet the master compensation rung performance criteria for three (3) of the previous five (5) years, one (1) of which must be during the fourth (4<sup>th</sup>) or fifth (5<sup>th</sup>) year, shall move one cell for each year of. Instructional staff who no longer meet the master compensation rung performance criteria for three (3) of the previous five (5) years, one (1) of which must be during the fourth (4<sup>th</sup>) or fifth (5<sup>th</sup>) year, or have been placed on a

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district improvement plan or probation in the previous year shall be placed in the terminal cell on the professional compensation rung.

(6) In addition to the allocation amount specified for the applicable cell on the career ladder, school districts shall receive an additional allocation amount for instructional staff holding a professional certificate who have acquired additional education in the following amounts:

(a) For Instructional staff holding a professional certificate and a baccalaureate degree and 24 or more credits, \$2,000 per fiscal year.

(b) For instructional staff holding a professional certificate and a master degree, \$3,500 per fiscal year.

(c) For instructional staff holding a professional certificate and a doctorate, \$6,000 per fiscal year.

(d) Instructional staff whose initial certificate is an occupational specialist certificate shall be treated as BA degree prepared instructional staff. Credits earned by such occupational specialist instructional staff after initial certification shall be credited toward the education factor.

(e) In determining the additional education allocation amount, only credits and degrees earned after initial certification, based upon a transcript on file with the teacher certification office of the state department of education, earned at an institution of higher education accredited by a body recognized by the state board of education, shall be allowed. All credits and degrees earned must be in a relevant pedagogy or content area as determined by the state department of education. Additional education allocation amounts are not cumulative.

Effective July 1, 2020 the allocation shall be:

<u>Base Allocation</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
<u>Residency</u>	<u>\$40,000</u>	<u>\$41,000</u>	<u>\$42,000</u>		
<u>Professional</u>	<u>\$47,000</u>	<u>\$48,000</u>	<u>\$49,000</u>	<u>\$50,000</u>	<u>\$51,000</u>
<u>Master</u>	<u>\$54,000</u>	<u>\$55,000</u>	<u>\$56,000</u>	<u>\$57,000</u>	<u>\$58,000</u>

33-1004C. Base and minimum salaries -- leadership premiums -- Education and experience index. [(1)] The following shall be reviewed annually by the legislature:

(a) The base salary figures pursuant to subsections 1., 2. 3. and 43. of section 33-1004E, Idaho Code;

(b) The minimum instructional salary figure pursuant to subsection 1. of section 33-1004E, Idaho Code; and

(c) The leadership premium figures pursuant to subsections (1) and (2) of section 33-1004J, Idaho Code.

(2) The statewide education and experience index (or state average index, or state index) is the average of all qualifying employees, instructional and administrative respectively. It is determined by totaling the index value for all qualifying employees and dividing by the number of employees.

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33-1004E. District's salary-based apportionment. Each district shall be entitled to a salary-based apportionment calculated as provided in this section.

~~(1-) To determine the apportionment for instructional staff, take the amounts indicated on the career ladder table plus the amounts associated with the additional education allocation amounts first determine the district average experience and education index by placing all eligible district certificated instructional employees on the statewide index provided in pursuant to section 33-1004A33-1004B, Idaho Code and calculate an average. The resulting average is the district index. Districts with an index above the state average index shall receive their actual index but not more than the state average plus .03 for the 1994-95 school year, and shall receive their actual index but not more than the state average plus .06 for the 1995-96 school year, and thereafter shall receive their actual district index. The district instructional staff index shall be multiplied by the instructional base salary of \$23,354. The amount so determined shall be multiplied by the district staff allowance for instructional staff determined as provided in section 33-1004(2), Idaho Code. The instructional salary allocation shall be further increased by the amount necessary for each full-time equivalent instructional staff member placed on the experience and education index to be allocated at least the minimum salary mandated by this section. Full-time instructional staff salaries shall be determined from a salary schedule developed by each district and submitted to the state department of education. No full-time instructional staff member shall be paid less than \$31,750 the minimum dollar amount on the career ladder pursuant to section 33-1004B, Idaho code for the applicable fiscal year. If an instructional staff member has been certified by the national board for professional teaching standards, the staff member shall be designated as a master teacher and receive \$2,000 per year for five (5) years. The instructional salary shall be increased by \$2,000 for each master teacher provided national board certified instructional staff person however, that no such awards shall be paid for the period July 1, 2010, through June 30, 2011, nor shall any liabilities accrue or payments be made pursuant to this section in the future to any individuals who would have otherwise qualified for a payment during this stated time period. The resulting amount is the district's salary-based apportionment for instructional staff. For purposes of this section, teachers qualifying for the salary increase as master teacher shall be those who have been recognized as national board certified teachers as of July 1 of each year.~~

(2) To determine the apportionment for pupil service staff, first determine the district average experience and education index by placing all eligible district certificated pupil service employees on the statewide index pursuant to section 33-1004A, Idaho Code. The resulting average is the district index. The district pupil service staff index shall be multiplied by the instructional base salary of \$23,354. The amount so determined shall be multiplied by the district staff allowance for pupil service staff determined pursuant in section 33-1004(23), Idaho Code. The pupil service salary allocation shall be further increased by the amount necessary for each full-time equivalent pupil service staff member placed on the experience and education index to be allocated at least the minimum salary mandated by this section. Full-time pupil service staff salaries shall be determined from a salary schedule developed by each district and submitted to the state department of education. The resulting amount is the

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district's salary-based apportionment for pupil services staff. No full-time pupil service staff member shall be paid less than \$31,750.

2(3). To determine the apportionment for district administrative staff, first determine the district average experience and education index by placing all eligible certificated administrative employees on the statewide index provided in section 33-1004A, Idaho Code. The resulting average is the district index. Districts with an index above the state average index shall receive their actual index but not more than the state average plus.03 for the school year 1994-95, and shall receive their actual index but not more than the state average index plus.06 for the 1995-96 school year, and thereafter shall receive their actual district index. The district administrative staff index shall be multiplied by the base salary of \$32,151. The amount so determined shall be multiplied by the district staff allowance for administrative staff determined as provided in section 33-1004(3), Idaho Code. The resulting amount is the district's salary-based apportionment for administrative staff.

3(4). To determine the apportionment for classified staff, multiply \$19,249 by the district classified staff allowance determined as provided in section 33-1004(45), Idaho Code. The amount so determined is the district's apportionment for classified staff.

4(5). The district's salary-based apportionment shall be the sum of the apportionments calculated in subsections 1., 2., 3. and 34., of this section, plus the benefit apportionment as provided in section 33-1004F, Idaho Code.

33-1004J. Leadership premiums. (1) Of the moneys available to the educational support program, eight hundred fifty dollars (\$850) shall be distributed per full-time equivalent instructional and pupil service staff position employed by each school district. Such moneys shall be paid to instructional and pupil service staff employees for leadership activities as provided in paragraphs (a) through (h) of this subsection. Such premiums shall be valid only for the fiscal year for which the premiums are made and shall be made for one (1) or more of the following reasons as identified as leadership priorities by the board of trustees:

(a) Providing instruction in a subject in which the employee holds a content area master's degree;

(b) Teaching a course in which students earn both high school and college credit;

(c) Teaching a course to middle school students in which the students earn both middle school and high school credit;

(d) Holding and providing service in multiple nonadministrative certificate or subject endorsement areas;

(e) Serving in an instructional or pupil service position designated as hard to fill by the board of trustees;

(f) Providing mentoring, peer assistance or professional development pursuant to section 33-512(17), Idaho Code;

(g) Having received professional development in career and academic counseling, and then providing career or academic counseling for students, with such services incorporated within or provided in addition to the teacher's regular classroom instructional or pupil service duties;



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(h) Other leadership duties designated by the board of trustees, exclusive of duties related to student activities or athletics. Such duties shall require that the employee work additional time as a condition of the receipt of a leadership premium.

(2) Local school district boards of trustees may provide leadership premiums to instructional or pupil service staff employees consistent with the provisions of this section. The decision as to whom and how many receive leadership premiums, and in what amounts, shall not be subject to collective bargaining, any other provision of law notwithstanding. A board may provide multiple leadership premiums to an instructional or pupil service staff employee. However, no such employee shall receive cumulative leadership premiums in excess of twenty-five percent (25%) of the base salary amount designated in section 33-1004E, Idaho Code, nor less than eight hundred fifty dollars (\$850). Effective July 1, 2018 through June 30, 2020, Instructional staff who have failed to meet the professional compensation rung performance criteria for the previous three (3) years, shall not be eligible for leadership premiums, other than those who currently are serving in a hard to fill position. Effective July 1, 2020, Instructional staff who do not meet the professional compensation rung performance criteria for three (3) of the previous (5) years, one (1) of which must be during the fourth (4<sup>th</sup>) or fifth (5<sup>th</sup>) year, shall not be eligible for leadership premiums, other than those who currently are serving in a hard to fill position.

(3) The state department of education may require reports of information as needed to implement the provisions of this section. Also, the department shall report, on or before January 15, 2016, and on or before January 15 of each subsequent year, to the governor, the senate education committee and the house of representatives education committee relevant information regarding leadership premiums, including the following:

- (a) The number of leadership premiums issued, by district;
- (b) The average dollar amount of leadership premiums issued, by district;
- (c) The highest and lowest leadership premium issued, by district; and
- (d) The percent of instructional and pupil service staff positions receiving leadership premiums and the cumulative amount of such premiums, by district:-  
(e) The reasons identified as leadership priorities by the board of trustees as listed in subsection (1).

(4) For the purposes of this section, the term "school district" also means "public charter school," and the term "board of trustees" also means "board of directors."

(5) The state board of education is hereby authorized to promulgate rules to implement the provisions of this section.



# Career Ladder Framework

December 5, 2014



# Implementation Schedule – Year One

- **Year 1: FY 2016**

- New teachers will be placed in the first cell of the Residency/Professional rung of ladder
- Currently certificated teachers will be placed in a cell of the ladder with a cohort based on where they are on the current grid
  - The cell would be above the apportionment level on the current grid
  - The cell could be either be on the Residency/Professional or the Professional rung of the ladder depending on the cohort (which starts in cell 2 of the Residency/Professional rung)





## Education Credit

- Bonus in addition to base appropriation
- Credit must be earned at higher education institution in relevant pedagogy or content area
  - \$2,000 for BA+24
  - \$3,500 for Masters
  - \$6,000 for Doctorate
- Bonus will be awarded for credits earned after year 1 through the implementation period as teachers attain these levels of education.
- In 2020, teachers who earned education levels prior to implementation will be moved to the same amount as teachers who earned the education after implementation.



# Implementation Schedule – Years Two-Three

- **Year 2: FY 2017**
  - New teachers will be placed in the first cell of the Residency/Professional rung of apportionment ladder
  - All other teachers move one increment to the next cell on the apportionment ladder
- **Year 3: FY 2018**
  - New teachers will be placed in the first cell of the Residency rung of apportionment ladder
  - All other teachers move one increment to the next cell on the residency or professional rung as applicable



# Implementation Schedule – Year Four

- **Year 4: FY 2019** – Residency and Professional Levels
  - Residency teachers who meet the criteria to qualify for a Professional certificate will be placed in the first cell of the professional rung of the apportionment ladder
  - Teachers who have not met proficiency criteria for 3 of 3 years on the professional apportionment rung:
    - Apportionment will be frozen at the current amount
    - Not be eligible for leadership premiums (except for hard to fill)
    - Not eligible for education attainment bonus
    - Deficiencies must be addressed in IPLP
    - Apportionment increases will resume and education bonus earned will be awarded once a teacher has achieved proficiency in 3 of 5 years on a rolling calendar basis.

5 year review periods. Once a teacher can demonstrate proficiency for 3 of 5 the apportionment would resume.



# Implementation Schedule – Year Four

- **Year 4: FY 2019 – Master Level**
  - Teachers who meet the following criteria will be placed in the first cell on the master rung of the apportionment ladder:
    - A minimum of 8 years teaching experience
    - For 3 of 3 years, must achieve the following:
      - Student achievement/growth
        - 60 percent of students must meet or exceed growth targets
      - Demonstrated Teacher Proficiency on the Idaho state performance evaluation framework:
        - No elements marked as basic
        - No less than 6 distinguished ratings
    - For last 3 years:
      - No District Performance Improvement Plan or Probation
      - No elements marked as Unsatisfactory on state performance evaluation



# Implementation Schedule – Year Five

- **Year 5: FY 2020** – Residency and Professional Levels
  - New teachers will be placed in the first cell of the Residency/Professional rung of ladder
  - Residency teachers who meet the criteria to qualify for a Professional certificate will be placed in the first cell of the professional apportionment rung of the ladder
  - Teachers who have not met proficiency criteria for 3 of 4 years on the professional apportionment rung:
    - Apportionment will be frozen at the current amount
    - Not be eligible for leadership premiums (except for hard to fill)
    - Not eligible for education attainment bonus
    - Deficiencies must be addressed in IPLP
    - Apportionment increases will resume and education bonus earned will be awarded once a teacher has achieved proficiency in 3 of 5 years on a rolling calendar basis.



# Implementation Schedule – Year Five

- **Year 5: FY 2020 – Master Level**
  - Teachers who meet the following criteria will be placed in the first cell on the master rung of the apportionment ladder:
    - A minimum of 8 years teaching experience
    - For 3 of 4 years, must achieve the following:
      - Student achievement/growth
        - 60 percent of students must meet or exceed growth targets
      - Demonstrated Teacher Proficiency on the Idaho state performance evaluation framework:
        - No elements marked as basic
        - No less than 6 distinguished ratings
    - For last 4 years:
      - No District Performance Improvement Plan or Probation
      - No elements marked as Unsatisfactory on state performance evaluation



## Full Implementation – FY 2021

- New teachers will be placed in the first cell of the Residency/Professional rung of ladder
- Residency teachers who meet the criteria to qualify for a Professional certificate will be placed in the first cell of the professional apportionment rung of the ladder
- Teachers who meet the following criteria will be placed in the first cell on the master rung of the apportionment ladder:
  - A minimum of 8 years teaching experience
  - For 3 of 5 years, must achieve the following:
    - Student achievement/growth
      - 60 percent of students must meet or exceed growth targets
    - Demonstrated Teacher Proficiency on the Idaho state performance evaluation framework:
      - No elements marked as basic
      - No less than 6 distinguished ratings
  - For last 5 years:
    - No District Performance Improvement Plan or Probation
    - No elements marked as Unsatisfactory on state performance evaluation



## Full Implementation – FY 2021

- Teachers who will not be able to meet proficiency criteria for 3 of 5 years on the professional rung:
  - Apportionment will be frozen at the current level
  - Apportionment increases will resume once a teacher has achieved proficiency (on a rolling basis)
- Teachers who will not be able to meet proficiency criteria for 3 of 5 years on the master rung (on a rolling basis):
  - Will move back down to the last cell of the professional rung
  - Eligible for education bonus (based on professional level proficiency criteria)
  - Eligible for leadership premiums
  - Can move to master level after another 3 of 5 years that meet master criteria



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Fiscal Impact Table	FTE	Transition Cost
\$31,750	4,827.1094	4928.08
\$32,528	609.4589	621.75
\$33,748	436.1255	445.13
\$35,013	694.4273	708.53
\$36,326	901.0850	919.87
\$37,688	1,346.4286	1374.19
\$39,102	211.3493	215.42
\$40,568	1,224.5804	1250.65
\$42,089	169.9368	173.56
\$43,668	3,768.3175	3846.90
\$45,305	56.8987	58.19
\$47,004	1,468.0309	1498.74

Total FTE: 15,713.7482

Leadership Award Pool at \$850 per FTE: \$15,890,449

Total Year 1 Extra Cost: \$15,890,449

4928.08	621.75	445.13	708.53	919.87	1374.19	215.42	1250.65	173.56	3846.90
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**PLANNING, POLICY AND GOVERNMENTAL AFFAIRS  
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The present salary cohorts, shown above, go in different cells in year 0. As we progress through the transition, the cohorts generally stay intact, with some consolidation occurring at the top of the professional salary range. The transition is effected as the cohorts move to different cells in different years. The transition really takes 6 years, since year 0 is where we are now, and year 1 is where the transition begins.

## Career Ladder Year 0 Impact

**Salary Reimbursement Table**

	1	2	3	4	5	6	7	8	9	10
Res/Prof(<3 yrs) Teacher	\$31,000	\$31,750	\$32,528							
Professional Teacher	\$33,748	\$35,013	\$36,326	\$37,688	\$39,102	\$40,568	\$42,089	\$43,668	\$45,305	\$47,004
Prof Ed 1 pre-imp	\$33,748	\$35,013	\$36,326	\$37,688	\$39,102	\$40,568	\$42,089	\$43,668	\$45,305	\$47,004
Prof Ed 2 pre-imp	\$33,748	\$35,013	\$36,326	\$37,688	\$39,102	\$40,568	\$42,089	\$43,668	\$45,305	\$47,004
Prof Ed 3 pre-imp	\$33,748	\$35,013	\$36,326	\$37,688	\$39,102	\$40,568	\$42,089	\$43,668	\$45,305	\$47,004
Master Teacher	\$48,000	\$49,000	\$50,000	\$51,000	\$52,000					
Master Ed 1 pre-imp	\$48,000	\$49,000	\$50,000	\$51,000	\$52,000					
Master Ed 2 pre-imp	\$48,000	\$49,000	\$50,000	\$51,000	\$52,000					
Master Ed 3 pre-imp	\$48,000	\$49,000	\$50,000	\$51,000	\$52,000					

**FTE Table**

	1	2	3	4	5	6	7	8	9	10
Res/Prof(<3 yrs) Teacher	0.00	4928.08	621.75							
Professional Teacher	218.11	347.18	450.73	673.35	105.55	612.82	85.04	1884.98	28.51	734.38
Prof Ed 1,pre-imp	178.05	283.41	367.95	549.67	86.17	500.26	69.42	1538.76	23.28	599.50
Prof Ed 2 pre-imp	44.51	70.85	91.99	137.42	21.54	125.07	17.36	384.69	5.82	149.87
Prof Ed 3 pre-imp	4.45	7.09	9.20	13.74	2.15	12.51	1.74	38.47	0.58	14.99
Master Teacher	0	0	0	0	0					
Master Ed 1 pre-imp										
Master Ed 2 pre-imp										
Master Ed 3 pre-imp										

**Salary Reimbursement Table**

	1	2	3	4	5	6	7	8	9	10
Res/Prof(<3 yrs) Teacher	\$0	\$156,466,457	\$20,224,364							
Professional Teacher	\$7,360,899	\$12,155,843	\$16,373,392	\$25,377,244	\$4,127,411	\$24,860,851	\$3,579,430	\$82,313,391	\$1,291,865	\$34,518,918
Prof Ed 1 pre-imp	\$6,008,897	\$9,923,137	\$13,366,035	\$20,716,117	\$3,369,315	\$20,294,572	\$2,921,983	\$67,194,605	\$1,054,584	\$28,178,708
Prof Ed 2 pre-imp	\$1,502,224	\$2,480,784	\$3,341,509	\$5,179,029	\$842,329	\$5,073,643	\$730,496	\$16,798,651	\$263,646	\$7,044,677
Prof Ed 3 pre-imp	\$150,222	\$248,078	\$334,151	\$517,903	\$84,233	\$507,364	\$73,050	\$1,679,865	\$26,365	\$704,468
Master Teacher										
Master Ed 1 pre-imp										
Master Ed 2 pre-imp										
Master Ed 3 pre-imp										
subtotals	\$15,022,242	\$181,274,300	\$53,639,450	\$51,790,293	\$8,423,288	\$50,736,430	\$7,304,958	\$167,986,513	\$2,636,460	\$70,446,771

Career Ladder Cost: \$609,260,707  
FTE 16041.01

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## Career Ladder Year 1 Impact

Salary Reimbursement Table

	1	2	3	4	5	6	7	8	9	10
Res/Prof(<3 yrs) Teacher	\$32,800	\$33,600	\$34,422							
Professional Teacher	\$36,398	\$37,610	\$38,661	\$39,950	\$41,082	\$42,454	\$43,671	\$45,134	\$47,004	\$47,803
Prof Ed 1 pre-imp	\$36,398	\$37,610	\$38,661	\$39,950	\$41,082	\$42,454	\$43,671	\$45,134	\$47,004	\$47,803
Prof Ed 2 pre-imp	\$36,398	\$37,610	\$38,661	\$39,950	\$41,082	\$42,454	\$43,671	\$45,134	\$47,004	\$47,803
Prof Ed 3 pre-imp	\$36,398	\$37,610	\$38,661	\$39,950	\$41,082	\$42,454	\$43,671	\$45,134	\$47,004	\$47,803
Master Teacher										
Master Ed 1 pre-imp										
Master Ed 2 pre-imp										
Master Ed 3 pre-imp										

FTE Table

	1	2	3	4	5	6	7	8	9	10
Res/Prof(<3 yrs) Teacher	694.58	4,714.69	594.83							
Professional Teacher	208.67	332.15	431.22	644.19	100.98	586.28	81.36	1,803.36	27.28	702.58
Prof Ed 1 pre-imp	170.34	271.14	352.01	525.87	82.44	478.60	66.42	1,472.13	22.27	573.54
Prof Ed 2 pre-imp	42.59	67.79	88.00	131.47	20.61	119.65	16.60	368.03	5.57	143.38
Prof Ed 3 pre-imp	4.26	6.78	8.80	13.15	2.06	11.96	1.66	36.80	0.56	14.34
Master Teacher										
Master Ed 1										
Master Ed 2										

Salary Reimbursement Table

	1	2	3	4	5	6	7	8	9	10
Res/Prof(<3 yrs) Teacher	\$22,782,083	\$158,413,639	\$20,475,496							
Professional Teacher	\$7,595,229	\$12,492,216	\$16,671,232	\$25,735,835	\$4,148,603	\$24,890,342	\$3,553,171	\$81,393,672	\$1,282,277	\$33,585,754
Prof Ed 1 pre-imp	\$6,200,187	\$10,197,728	\$13,609,169	\$21,008,845	\$3,386,615	\$20,318,647	\$2,900,548	\$66,443,814	\$1,046,756	\$27,416,942
Prof Ed 2 pre-imp	\$1,550,047	\$2,549,432	\$3,402,292	\$5,252,211	\$846,654	\$5,079,662	\$725,137	\$16,610,953	\$261,689	\$6,854,235
Prof Ed 3 pre-imp	\$155,005	\$254,943	\$340,229	\$525,221	\$84,665	\$507,966	\$72,514	\$1,661,095	\$26,169	\$685,424
Master Teacher										
Master Ed 1 pre-imp										
Master Ed 2 pre-imp										
Master Ed 3 pre-imp										
subtotals	\$38,282,550	\$183,907,958	\$54,498,419	\$52,522,112	\$8,466,537	\$50,796,617	\$7,251,370	\$166,109,535	\$2,616,891	\$68,542,355

Career Ladder Cost: \$632,994,343

FTE 16041.01 Benefits Adj.

Total System Cost Increase over Previous Year: **\$23,733,636 \$ 28,235,907**

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## Career Ladder Year 2 Impact

Salary Reimbursement Table

	1	2	3	4	5	6	7	8	9	10
Res/Prof(<3 yrs) Teacher	\$34,600	\$35,450	\$36,317							
Professional Teacher	\$39,049	\$40,208	\$40,996	\$42,213	\$43,061	\$44,341	\$45,253	\$46,601	\$47,583	\$48,602
Prof Ed 1 pre-imp	\$39,049	\$40,208	\$40,996	\$42,213	\$43,061	\$44,341	\$45,253	\$46,601	\$47,583	\$48,602
Prof Ed 2 pre-imp	\$39,049	\$40,208	\$40,996	\$42,213	\$43,061	\$44,341	\$45,253	\$46,601	\$47,583	\$48,602
Prof Ed 3 pre-imp	\$39,049	\$40,208	\$40,996	\$42,213	\$43,061	\$44,341	\$45,253	\$46,601	\$47,583	\$48,602
Prof Ed 1 post-imp	\$39,549	\$40,708	\$41,496	\$42,713	\$43,561	\$44,841	\$45,753	\$47,101	\$48,083	\$49,102
Prof Ed 2 post-imp	\$39,924	\$41,083	\$41,871	\$43,088	\$43,936	\$45,216	\$46,128	\$47,476	\$48,458	\$49,477
Prof Ed 3 post-imp	\$40,549	\$41,708	\$42,496	\$43,713	\$44,561	\$45,841	\$46,753	\$48,101	\$49,083	\$50,102
Master Teacher										
Master Ed 1 pre-imp										
Master Ed 2 pre-imp										
Master Ed 3 pre-imp										
Master Ed 1 post-imp										
Master Ed 2 post-imp										
Master Ed 3 post-imp										

FTE Table

	1	2	3	4	5	6	7	8	9	10
Res/Prof(<3 yrs) Teacher	694.58	664.50	4,510.55							
Professional Teacher	270.48	193.64	308.23	400.17	597.81	93.71	544.07	75.50	1,673.52	677.31
Prof Ed 1 pre-imp	223.08	159.71	254.21	330.04	493.04	77.29	448.72	62.27	1,380.22	558.61
Prof Ed 2 pre-imp	56.34	40.33	64.20	83.35	124.52	19.52	113.32	15.73	348.58	141.08
Prof Ed 3 pre-imp	5.69	4.07	6.49	8.42	12.58	1.97	11.45	1.59	35.21	14.25
Prof Ed 1 post-imp	8.37	5.99	9.53	12.38	18.49	2.90	16.83	2.34	51.76	20.95
Prof Ed 2 post-imp	4.55	3.26	5.19	6.74	10.06	1.58	9.16	1.27	28.17	11.40
Prof Ed 3 post-imp	0.57	0.41	0.65	0.84	1.26	0.20	1.14	0.16	3.52	1.43
Master Teacher										
Master Ed 1 pre-imp										
Master Ed 2 pre-imp										
Master Ed 3 pre-imp										
Master Ed 1 post-imp										
Master Ed 2 post-imp										
Master Ed 3 post-imp										

Salary Reimbursement Table

	1	2	3	4	5	6	7	8	9	10
Res/Prof(<3 yrs) Teacher	\$24,032,319	\$23,556,545	\$163,808,578							
Professional Teacher	\$10,561,961	\$7,786,036	\$12,636,194	\$16,892,290	\$25,742,503	\$4,155,330	\$24,621,068	\$3,518,535	\$79,631,023	\$32,919,038

# PLANNING, POLICY AND GOVERNMENTAL AFFAIRS

DECEMBER 18, 2014

Prof Ed 1 pre-imp	\$8,710,896	\$6,421,473	\$10,421,604	\$13,931,786	\$21,230,930	\$3,427,077	\$20,306,035	\$2,901,885	\$65,675,071	\$27,149,722
Prof Ed 2 pre-imp	\$2,199,946	\$1,621,749	\$2,631,987	\$3,518,487	\$5,361,893	\$865,512	\$5,128,310	\$732,874	\$16,586,306	\$6,856,690
Prof Ed 3 pre-imp	\$222,217	\$163,813	\$265,857	\$355,403	\$541,605	\$87,425	\$518,011	\$74,028	\$1,675,384	\$692,595
Prof Ed 1 post-imp	\$330,841	\$243,800	\$395,577	\$528,630	\$805,404	\$129,965	\$769,890	\$109,988	\$2,488,694	\$1,028,589
Prof Ed 2 post-imp	\$181,757	\$133,902	\$217,225	\$290,216	\$442,089	\$71,321	\$422,422	\$60,334	\$1,364,954	\$564,051
Prof Ed 3 post-imp	\$23,075	\$16,992	\$27,558	\$36,803	\$56,047	\$9,038	\$53,518	\$7,641	\$172,820	\$71,397
Master Teacher										
Master Ed 1 pre-imp										
Master Ed 2 pre-imp										
Master Ed 3 pre-imp										
Master Ed 1 post-imp										
Master Ed 2 post-imp										
Master Ed 3 post-imp										
subtotals	\$46,263,012	\$39,944,311	\$190,404,580	\$35,553,614	\$54,180,472	\$8,745,667	\$51,819,254	\$7,405,285	\$167,594,253	\$69,282,083

Career Ladder Cost: \$671,192,531

FTE 16041.01 Benefits Adj.

Total System Cost Increase over Previous Year: **\$38,198,188 \$ 45,444,384**

**PLANNING, POLICY AND GOVERNMENTAL AFFAIRS  
DECEMBER 18, 2014**

## Career Ladder Year 3 Impact

Salary Reimbursement Table

	1	2	3	4	5	6	7	8	9	10
Residency Teacher	\$36,400	\$37,300	\$38,211							
Professional Teacher	\$41,699	\$42,805	\$43,330	\$44,475	\$45,041	\$46,227	\$46,836	\$48,067	\$48,722	\$49,402
Prof Ed 1 pre-imp	\$41,699	\$42,805	\$43,330	\$44,475	\$45,041	\$46,227	\$46,836	\$48,067	\$48,722	\$49,402
Prof Ed 2 pre-imp	\$41,699	\$42,805	\$43,330	\$44,475	\$45,041	\$46,227	\$46,836	\$48,067	\$48,722	\$49,402
Prof Ed 3 pre-imp	\$41,699	\$42,805	\$43,330	\$44,475	\$45,041	\$46,227	\$46,836	\$48,067	\$48,722	\$49,402
Prof Ed 1 post-imp	\$42,699	\$43,805	\$44,330	\$45,475	\$46,041	\$47,227	\$47,836	\$49,067	\$49,722	\$50,402
Prof Ed 2 post-imp	\$43,449	\$44,555	\$45,080	\$46,225	\$46,791	\$47,977	\$48,586	\$49,817	\$50,472	\$51,152
Prof Ed 3 post-imp	\$44,699	\$45,805	\$46,330	\$47,475	\$48,041	\$49,227	\$49,836	\$51,067	\$51,722	\$52,402
Master Teacher										
Master Ed 1 pre-imp										
Master Ed 2 pre-imp										
Master Ed 3 pre-imp										
Master Ed 1 post-imp										
Master Ed 2 post-imp										
Master Ed 3 post-imp										

FTE Table

	1	2	3	4	5	6	7	8	9	10
Residency Teacher	694.58	664.50	635.73							
Professional Teacher	2,051.03	251.01	179.70	286.04	371.36	554.77	86.97	504.90	70.07	2,181.57
Prof Ed 1 pre-imp	1,691.57	209.15	149.74	238.34	309.43	462.26	72.46	420.70	58.38	1,817.78
Prof Ed 2 pre-imp	427.21	53.36	38.20	60.81	78.94	117.94	18.49	107.33	14.90	463.77
Prof Ed 3 pre-imp	43.15	5.44	3.90	6.20	8.05	12.03	1.89	10.95	1.52	47.32
Prof Ed 1 post-imp	63.43	15.61	11.17	17.78	23.09	34.49	5.41	31.39	4.36	135.64
Prof Ed 2 post-imp	34.52	8.74	6.26	9.96	12.93	19.32	3.03	17.58	2.44	75.96
Prof Ed 3 post-imp	4.32	1.13	0.81	1.28	1.67	2.49	0.39	2.27	0.31	9.79
Master Teacher										
Master Ed 1 pre-imp										
Master Ed 2 pre-imp										
Master Ed 3 pre-imp										
Master Ed 1 post-imp										
Master Ed 2 post-imp										
Master Ed 3 post-imp										

Salary Reimbursement Table

	1	2	3	4	5	6	7	8	9	10
Residency Teacher	\$25,282,556	\$24,785,871	\$24,291,918							
Professional Teacher	\$85,526,437	\$10,744,369	\$7,786,572	\$12,721,680	\$16,726,227	\$25,645,415	\$4,073,105	\$24,269,007	\$3,413,824	\$107,773,007
Prof Ed 1 pre-imp	\$70,537,267	\$8,952,689	\$6,488,120	\$10,600,273	\$13,937,041	\$21,368,908	\$3,393,894	\$20,222,023	\$2,844,551	\$89,801,294

**PLANNING, POLICY AND GOVERNMENTAL AFFAIRS  
DECEMBER 18, 2014**

Prof Ed 2 pre-imp	\$17,814,259	\$2,284,082	\$1,655,302	\$2,704,427	\$3,555,730	\$5,451,808	\$865,878	\$5,159,206	\$725,725	\$22,910,831
Prof Ed 3 pre-imp	\$1,799,420	\$233,046	\$168,891	\$275,934	\$362,793	\$556,250	\$88,346	\$526,396	\$74,046	\$2,337,601
Prof Ed 1 post-imp	\$2,708,582	\$683,632	\$495,299	\$808,749	\$1,063,034	\$1,628,984	\$258,650	\$1,540,305	\$216,609	\$6,836,372
Prof Ed 2 post-imp	\$1,499,949	\$389,427	\$282,088	\$460,415	\$605,057	\$926,810	\$147,130	\$875,843	\$123,143	\$3,885,724
Prof Ed 3 post-imp	\$192,888	\$51,621	\$37,381	\$60,971	\$80,100	\$122,616	\$19,459	\$115,765	\$16,271	\$513,268
Master Teacher										
Master Ed 1 pre-imp										
Master Ed 2 pre-imp										
Master Ed 3 pre-imp										
Master Ed 1 post-imp										
Master Ed 2 post-imp										
Master Ed 3 post-imp										
subtotals	\$205,361,357	\$48,124,739	\$41,205,571	\$27,632,449	\$36,329,981	\$55,700,792	\$8,846,462	\$52,708,544	\$7,414,169	\$234,058,097

Career Ladder Cost: \$717,382,160

FTE 16041.01 Benefits Adj.

Total System Cost Increase over Previous Year: **\$46,189,630 \$ 54,951,803**

**PLANNING, POLICY AND GOVERNMENTAL AFFAIRS  
DECEMBER 18, 2014**

## Career Ladder Year 4 Impact

Salary Reimbursement Table

	1	2	3	4	5	6	7	8	9	10
Residency Teacher	\$38,200	\$39,150	\$40,106							
Professional Teacher	\$44,350	\$45,403	\$45,665	\$46,738	\$47,020	\$48,114	\$48,418	\$49,534	\$49,861	\$50,201
Prof Ed 1 pre-imp	\$44,350	\$45,403	\$45,665	\$46,738	\$47,020	\$48,114	\$48,418	\$49,534	\$49,861	\$50,201
Prof Ed 2 pre-imp	\$44,350	\$45,403	\$45,665	\$46,738	\$47,020	\$48,114	\$48,418	\$49,534	\$49,861	\$50,201
Prof Ed 3 pre-imp	\$44,350	\$45,403	\$45,665	\$46,738	\$47,020	\$48,114	\$48,418	\$49,534	\$49,861	\$50,201
Prof Ed 1 post-imp	\$45,850	\$46,903	\$47,165	\$48,238	\$48,520	\$49,614	\$49,918	\$51,034	\$51,361	\$51,701
Prof Ed 2 post-imp	\$46,975	\$48,028	\$48,290	\$49,363	\$49,645	\$50,739	\$51,043	\$52,159	\$52,486	\$52,826
Prof Ed 3 post-imp	\$48,850	\$49,903	\$50,165	\$51,238	\$51,520	\$52,614	\$52,918	\$54,034	\$54,361	\$54,701
Master Teacher	\$52,800									
Master Ed 1 pre-imp	\$52,800									
Master Ed 2 pre-imp	\$52,800									
Master Ed 3 pre-imp	\$52,800									
Master Ed 1 post-imp	\$53,550									
Master Ed 2 post-imp	\$55,425									
Master Ed 3 post-imp	\$57,300									

FTE Table

	1	2	3	4	5	6	7	8	9	10
Residency Teacher	755.40	664.50	635.73							
Professional Teacher	259.28	1,903.36	232.93	166.76	265.44	292.93	437.60	68.60	398.26	1,776.09
Prof Ed 1 pre-imp	214.09	1,585.96	196.09	140.39	223.46	246.60	368.39	57.75	335.27	1,495.17
Prof Ed 2 pre-imp	54.13	404.62	50.54	36.18	57.59	63.56	94.95	14.88	86.41	385.35
Prof Ed 3 pre-imp	5.47	41.28	5.21	3.73	5.94	6.55	9.79	1.53	8.91	39.71
Prof Ed 1 post-imp	8.94	118.34	21.84	15.63	24.88	27.46	41.02	6.43	37.33	166.50
Prof Ed 2 post-imp	4.87	66.28	12.58	9.01	14.33	15.82	23.63	3.70	21.51	95.91
Prof Ed 3 post-imp	0.61	8.55	1.67	1.20	1.91	2.10	3.14	0.49	2.86	12.75
Master Teacher	530.14									
Master Ed 1 pre-imp	432.72									
Master Ed 2 pre-imp	112.70									
Master Ed 3 pre-imp	11.73									
Master Ed 1 post-imp	43.11									
Master Ed 2 post-imp	37.84									
Master Ed 3 post-imp	5.11									

Salary Reimbursement Table

	1	2	3	4	5	6	7	8	9	10
Residency Teacher	\$28,856,118	\$26,015,197	\$25,496,241							
Professional Teacher	\$11,498,785	\$86,417,338	\$10,636,953	\$7,794,127	\$12,481,316	\$14,093,737	\$21,187,691	\$3,397,941	\$19,857,776	\$89,161,089
Prof Ed 1 pre-imp	\$9,494,657	\$72,006,795	\$8,954,559	\$6,561,369	\$10,507,208	\$11,864,600	\$17,836,538	\$2,860,506	\$16,716,969	\$75,058,918



**PLANNING, POLICY AND GOVERNMENTAL AFFAIRS  
DECEMBER 18, 2014**

Prof Ed 2 pre-imp	\$2,400,638	\$18,370,955	\$2,307,871	\$1,691,071	\$2,708,038	\$3,057,880	\$4,597,036	\$737,242	\$4,308,488	\$19,345,041
Prof Ed 3 pre-imp	\$242,761	\$1,874,396	\$237,852	\$174,283	\$279,093	\$315,148	\$473,775	\$75,981	\$444,037	\$1,993,720
Prof Ed 1 post-imp	\$409,921	\$5,550,466	\$1,029,897	\$754,097	\$1,207,366	\$1,362,384	\$2,047,738	\$328,180	\$1,917,536	\$8,608,001
Prof Ed 2 post-imp	\$228,560	\$3,183,133	\$607,430	\$444,533	\$711,637	\$802,605	\$1,206,197	\$193,218	\$1,128,803	\$5,066,592
Prof Ed 3 post-imp	\$29,710	\$426,456	\$83,891	\$61,344	\$98,182	\$110,646	\$166,250	\$26,611	\$155,431	\$697,491
Master Teacher	\$27,991,445									
Master Ed 1 pre-imp	\$22,847,731									
Master Ed 2 pre-imp	\$5,950,537									
Master Ed 3 pre-imp	\$619,526									
Master Ed 1 post-imp	\$2,308,422									
Master Ed 2 post-imp	\$2,097,038									
Master Ed 3 post-imp	\$292,548									
subtotals	\$115,268,397	\$213,844,737	\$49,354,693	\$17,480,824	\$27,992,839	\$31,607,001	\$47,515,226	\$7,619,679	\$44,529,039	\$199,930,852

Career Ladder Cost: \$755,143,287

FTE 16041.01 Benefits Adj.

Total System Cost Increase over Previous Year: **\$37,761,126 \$ 44,924,412**

**PLANNING, POLICY AND GOVERNMENTAL AFFAIRS  
DECEMBER 18, 2014**

## Career Ladder Year 5 Impact

Salary Reimbursement Table

	1	2	3	4	5	6	7	8	9	10
Residency Teacher	\$40,000	\$41,000	\$42,000							
Professional Teacher	\$47,000	\$48,000	\$49,000	\$50,000	\$51,000					
Prof Ed 1	\$49,000	\$50,000	\$51,000	\$52,000	\$53,000					
Prof Ed 2	\$50,500	\$51,500	\$52,500	\$53,500	\$54,500					
Prof Ed 3	\$53,000	\$54,000	\$55,000	\$56,000	\$57,000					
Master Teacher	\$54,000	\$55,000	\$56,000	\$57,000	\$58,000					
Master Ed 1	\$55,000	\$56,000	\$57,000	\$58,000	\$59,000					
Master Ed 2	\$57,500	\$58,500	\$59,500	\$60,500	\$61,500					
Master Ed 3	\$60,000	\$61,000	\$62,000	\$63,000	\$64,000					

FTE Table

	1	2	3	4	5	6	7	8	9	10
Residency Teacher	755.40	722.69	635.73							
Professional Teacher	268.22	2,006.92	370.92	492.26	2,363.17					
Prof Ed 1	218.95	1,869.07	362.07	480.52	2,306.81					
Prof Ed 2	54.74	538.76	109.73	145.63	699.13					
Prof Ed 3	5.47	58.56	12.33	16.37	78.57					
Master Teacher	150.29	497.04								
Master Ed 1	146.70	447.16								
Master Ed 2	44.46	159.35								
Master Ed 3	5.00	18.99								

Salary Reimbursement Table

	1	2	3	4	5	6	7	8	9	10
Residency Teacher	\$30,215,831	\$29,630,172	\$26,700,563							
Professional Teacher	\$12,606,176	\$96,332,201	\$18,175,002	\$24,612,966	\$120,521,762					
Prof Ed 1	\$10,728,660	\$93,453,411	\$18,465,696	\$24,987,016	\$122,261,091					
Prof Ed 2	\$2,764,272	\$27,746,116	\$5,761,073	\$7,791,362	\$38,102,851					
Prof Ed 3	\$290,112	\$3,162,251	\$678,261	\$916,511	\$4,478,430					
Master Teacher	\$8,115,436	\$27,337,320								
Master Ed	\$8,068,594	\$25,041,026								
Master Ed 2	\$2,556,534	\$9,321,724								
Master Ed 3	\$299,795	\$1,158,403								
subtotals	\$75,645,410	\$313,182,624	\$69,780,595	\$58,307,855	\$285,364,134	\$0	\$0	\$0	\$0	\$0

Career Ladder Cost: \$802,280,619

FTE 16041.01 Benefits Adj.

Total System Cost Increase over Previous Year: **\$47,137,332 \$ 56,079,284**

**PLANNING, POLICY AND GOVERNMENTAL AFFAIRS  
DECEMBER 18, 2014**

## Career Ladder Year 6 Impact (post-transition)

Salary Reimbursement Table

	1	2	3	4	5	6	7	8	9	10
Residency Teacher	\$40,000	\$41,000	\$42,000							
Professional Teacher	\$47,000	\$48,000	\$49,000	\$50,000	\$51,000					
Prof Ed 1	\$49,000	\$50,000	\$51,000	\$52,000	\$53,000					
Prof Ed 2	\$50,500	\$51,500	\$52,500	\$53,500	\$54,500					
Prof Ed 3	\$53,000	\$54,000	\$55,000	\$56,000	\$57,000					
Master Teacher	\$54,000	\$55,000	\$56,000	\$57,000	\$58,000					
Master Ed 1	\$55,000	\$56,000	\$57,000	\$58,000	\$59,000					
Master Ed 2	\$58,500	\$59,500	\$60,500	\$61,500	\$62,500					
Master Ed 3	\$60,000	\$61,000	\$62,000	\$63,000	\$64,000					

FTE Table

	1	2	3	4	5	6	7	8	9	10
Residency Teacher	755.40	722.69	691.39							
Professional Teacher	268.22	248.90	1,862.42	327.00	2,517.35					
Prof Ed 1	218.95	212.98	1,809.98	332.61	2,560.50					
Prof Ed 2	54.74	56.03	546.04	105.32	810.77					
Prof Ed 3	5.47	5.76	61.18	12.21	93.96					
Master Teacher	149.70	140.90	466.01							
Master Ed 1	152.27	137.61	420.20							
Master Ed 2	48.22	47.30	166.51							
Master Ed 3	5.59	5.63	21.22							

Salary Reimbursement Table

	1	2	3	4	5	6	7	8	9	10
Residency Teacher	\$30,215,831	\$29,630,172	\$29,038,581							
Professional Teacher	\$12,606,176	\$11,947,423	\$91,258,607	\$16,350,066	\$128,384,614					
Prof Ed 1	\$10,728,660	\$10,649,013	\$92,308,748	\$17,295,560	\$135,706,440					
Prof Ed 2	\$2,764,272	\$2,885,733	\$28,667,084	\$5,634,524	\$44,186,872					
Prof Ed 3	\$290,112	\$311,065	\$3,364,837	\$683,507	\$5,355,783					
Master Teacher	\$8,083,933	\$7,749,660	\$26,096,552							
Master Ed 1	\$8,374,780	\$7,706,223	\$23,951,260							
Master Ed 2	\$2,820,582	\$2,814,323	\$10,073,799							
Master Ed 3	\$335,263	\$343,489	\$1,315,445							
subtotals	\$76,219,608	\$74,037,101	\$306,074,912	\$39,963,657	\$313,633,708	\$0	\$0	\$0	\$0	\$0

Career Ladder Cost: \$809,928,987

FTE 16041.01 Benefits Adj.

Total System Cost Increase over Previous Year: **\$7,648,368 \$ 9,099,264**

**AUDIT COMMITTEE  
DECEMBER 18, 2014**

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**SUBJECT**

Presentation of audit findings by the Board's external auditor

**APPLICABLE STATUTE, RULE OR POLICY**

Idaho State Board of Education Bylaws, Section V.H.4.f.

**BACKGROUND/DISCUSSION**

The Board contracts with Moss Adams LLP, an independent certified public accounting firm, to conduct the annual financial audits of Boise State University, Idaho State University, University of Idaho, Lewis-Clark State College, and Eastern Idaho Technical College. FY 2014 is the tenth year that Moss Adams has conducted audits of the financial statements for the colleges and universities.

The audits are conducted in accordance with Generally Accepted Government Auditing Standards and include an auditor's opinion on the basic financial statements.

**IMPACT**

The external auditor, Moss Adams, will present their audit findings.

**STAFF COMMENTS AND RECOMMENDATIONS**

In November, institution management presented their financial statements to the Audit Committee and Board staff. Moss Adams conducted a review of their audit findings with members of the Audit Committee and Board staff. Board members were subsequently provided the audit reports and financial statements.

**BOARD ACTION**

I move to accept from the Audit Committee the Fiscal Year 2014 financial audit reports for Boise State University, Idaho State University, University of Idaho, Lewis-Clark State College, and Eastern Idaho Technical College, as presented by Moss Adams LLP.

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

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**BUSINESS AFFAIRS AND HUMAN RESOURCES  
DECEMBER 18, 2014**

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<b>TAB</b>	<b>DESCRIPTION</b>	<b>ACTION</b>
<hr/>		
	<b>BOISE STATE UNIVERSITY</b>	
<b>1</b>	Multi-Year Employment Agreement – Women’s Volleyball Head Coach	Motion to approve
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	<b>BOISE STATE UNIVERSITY</b>	
<b>2</b>	Multi-Year Employment Agreement – Women’s Basketball Head Coach	Motion to approve
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	<b>IDAHO STATE UNIVERSITY</b>	
<b>3</b>	Multi-Year Employment Agreement – Men’s Football Head Coach	Motion to approve
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	<b>IDAHO STATE UNIVERSITY</b>	
<b>4</b>	Extension to Multi-Year Employment Agreement – Athletic Director	Motion to approve
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**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**DECEMBER 18, 2014**

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**BOISE STATE UNIVERSITY**

**SUBJECT**

Multi-year contract with Shawn Garus, Head Women's Volleyball Coach

**REFERENCE**

June 2012

The Idaho State Board of Education (Board) approved a two and one half year employment agreement with Women's Head Volleyball Coach Shawn Garus.

**APPLICABLE STATUTE, RULE, OR POLICY**

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

**BACKGROUND/DISCUSSION**

In June 2012, the Board approved a two and one half year employment contract with Shawn Gaurs as the Head Women's Volleyball Coach terminating January 31, 2015. Boise State University (BSU) now requests approval to enter into a new multi-year contract with Coach Garus as Head Women's Volleyball Coach.

**IMPACT**

The new contract will be a two (2) year agreement, commencing on February 1, 2015 and terminating on January 31, 2017, with the option for a one-year extension. The salary is \$87,610, with incentives as follows:

**Academic Achievement**

Academic incentive pay may be earned if annual team APR ranks nationally and meets the following levels in the national ranking within women's volleyball:

National Rank Within Sport:

970-974	\$1,500
975-979	\$1,750
980-984	\$2,000
985 and above	\$5,000

**Athletic Achievement**

Conference Championship	\$5,000
	OR
Qualifying team for NCAA Tournament	\$3,000
	AND
Top 25 National Ranking at End of Season	\$2,500
NCAA Regional Coach of the Year	\$3,000
NCAA National Coach of the Year	\$5,000
Conference Coach of the Year	\$3,000
Winning Record	\$1,500



**BUSINESS AFFAIRS AND HUMAN RESOURCES  
DECEMBER 18, 2014**

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Maximum potential annual compensation (base salary and incentive payments) is \$112,610. In addition, Garus may operate additional youth volleyball camps at BSU pursuant to the proposed agreement.

In the event Garus terminates the agreement for convenience, the following liquidated damages will be due: \$20,000 for the first year or \$10,000 for the second year. There are no liquidated damages due if the agreement is terminated in year three, the optional renewal year.

Finally, Garus may also earn supplemental compensation by assisting with university sponsored volleyball camps.

**ATTACHMENTS**

Attachment 1 – Clean version of Proposed Contract	Page 3
Attachment 2 – Redline Compare of the 2012-2015 to Proposed	Page 17
Attachment 3 – 4 Year APR Scores	Page 33

**STAFF COMMENTS AND RECOMMENDATIONS**

The maximum proposed incentive pay for academic achievement is \$5,000 which is the equivalent of a conference championship. The Board has historically looked favorably on academic incentives at that level. The proposed employment agreement is in substantial conformance with the Board's model contract.

This contract reflects a \$910 increase in base salary and total maximum potential compensation from the current contract.

The contract is in substantial conformance with the model contract.

The Athletic Committee met on December 16 to review this contract and will provide its recommendation at the December 18 Board meeting.

**BOARD ACTION**

I move to approve the request by Boise State University to enter into a two year employment agreement with Shawn Garus, Head Women's Volleyball Coach, commencing on February 1, 2015 and terminating on January 31, 2017, at a base salary of \$87,610 and supplemental compensation provisions, as submitted.

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

**EMPLOYMENT AGREEMENT**

This Employment Agreement (the "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, ("Effective Date") by and between Boise State University ("University") and Shawn Garus ("Coach").

**ARTICLE 1**

1.1. Employment. Subject to the terms and conditions of this Agreement, the University shall employ Coach as the head coach (the "Position") of its intercollegiate women's volleyball (the "Team"). Coach represents and warrants that Coach is fully qualified to serve, and is available for employment, in this capacity.

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

1.3. Duties. Coach shall manage and supervise the University's the Team and shall perform such other duties in the University's athletic program as the Director may assign and as may be described elsewhere in this Agreement. Coach shall, to the best of Coach's ability, and consistent with University policies and procedures, perform all duties and responsibilities customarily associated with the Position.

**ARTICLE 2**

2.1. Term. This Agreement is for a fixed-term appointment of two (2) years, commencing on February 1, 2015 and terminating, without further notice to Coach, on January 31, 2017 (the "Term"), unless sooner terminated in accordance with other provisions of this Agreement.

2.2. Extension or Renewal. This Agreement is renewable solely upon an offer from the University on or before October 1, 2016 and an acceptance by Coach, both of which must be in writing and signed by the parties. Extension of the contract will be at the sole discretion of the University and not based on athletic or academic achievement. Any renewal is subject to the prior approval of University's Board Education. This Agreement in no way grants to Coach a claim to tenure in employment, nor shall Coach's service pursuant to this Agreement count in any way toward tenure at the University.

ARTICLE 3

3.1 Regular Compensation.

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

- a) A salary in the amount of \$87,610 per year, payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the Director and President and approved by the University's Board of Trustees;
- b) The opportunity to receive such employee benefits calculated on the "base salary" as the University provides generally to non-faculty exempt employees; and
- c) The opportunity to receive such employee benefits as the University's Department of Athletics (the "Department") provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

3.2 Supplemental Compensation. Coach may earn supplemental compensation as follows:

3.2.1. Academic Achievement Incentive Pay. Coach shall qualify for Academic Incentive Pay if the single year team Academic Progress Rate ("APR") for the Team meets the following levels in the National Ranking within Women's Volleyball:

National Score within Sport		
970-974	=	\$1,500
975-979	=	\$1,750
980-984	=	\$2,000
985 and above	=	\$5,000

If Coach qualifies for Academic Incentive Pay, it will be paid as soon as reasonably practical following APR rating determination and verification by the NCAA, if Coach is still employed by the University on that date.

3.2.2. Athletic Achievement Incentive Pay. Coach may qualify for Athletic Incentive Pay as follows:

Conference Championship:	\$5,000
OR	

Qualify team for NCAA Tournament:	\$3,000
Top 25 National Ranking at End of Season:	\$2,500
NCAA Regional Coach of the Year:	\$3,000
NCAA National Coach of the Year:	\$5,000
Conference Coach of the Year:	\$3,000
Winning Record:	\$1,500

If Coach qualifies for Athletic Incentive Pay under this Section, University will pay Coach on the first regular pay date in February 2014 if Coach is still employed by the University on that date.

**3.2.3. Conditions for payment of Academic and Athletic Achievement Incentive supplemental compensation**

Any such supplemental compensation paid to Coach shall be accompanied with a detailed justification for the supplemental compensation and such justification shall be separately reported to the Board of Trustees as a document available to the public under the Idaho Public Records Act.

3.2.4 The Coach may receive the compensation hereunder from the University or the University's designated media outlet(s) or a combination thereof each year during the term of this Agreement in compensation for participation in media programs and public appearances (collectively, "Programs"). Agreements requiring the Coach to participate in Programs related to Coach's duties as an employee of University are the property of the University. The University shall have the exclusive right to negotiate and contract with all producers of media productions and all parties desiring public appearances by the Coach. Coach agrees to cooperate with the University in order for the Programs to be successful and agrees to provide Coach's services to and appear on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither Coach nor any assistant coach shall appear without the prior written approval of the Director on any radio or television program (including but not limited to a coach's show, call-in show, or interview show) or a regularly scheduled news segment, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Director, Coach shall not appear in any commercial endorsements which are broadcast on radio or television that conflict with those broadcast on the University's designated media outlets.

3.2.5 Coach agrees that the University has the exclusive right to operate athletic camps ("Camps") on its campus using University facilities. The University shall allow Coach the opportunity to earn supplemental compensation by assisting with the

Camps in Coach's capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the Camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the Camps, the University shall pay Coach supplemental compensation.

3.2.6 Coach agrees that the University has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff, including Coach, during official practices and games and during times when Coach or the Team is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of University. In order to avoid entering into an agreement with a competitor of any University selected vendors, Coach shall submit all outside consulting agreements to the University for review and approval prior to execution. Coach shall also report such outside income to the University in accordance with National Collegiate Athletic Association (the "NCAA") rules. Coach further agrees that Coach will not endorse any athletic footwear, apparel and/or equipment products, and will not participate in any messages or promotional appearances which contain a comparative or qualitative description of athletic footwear, apparel, or equipment products.

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

#### **ARTICLE 4**

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

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

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

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

4.1.4. Know, recognize, and comply with all applicable laws and the policies, rules and regulations of the University, the University's governing board, the conference of which the University is a member (the "Conference"), and the NCAA; supervise and take appropriate steps to ensure that Coach's assistant coaches, any other employees for whom Coach is administratively responsible, and the members of the Team know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the Director and to the University's Director of NCAA Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall cooperate fully with the University and Department at all times. The applicable laws, policies, rules, and regulations include the following, as they may be amended from time-to-time: (a) State Board of Education Governing Policies and Procedures and Rule Manual; (b) University's Policy Manual; (c) the policies of the Department; (d) NCAA rules and regulations; and (e) the rules and regulations of the Conference.

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

4.3 Outside Income. In accordance with NCAA rules, Coach shall obtain prior written approval from the President and Director for all athletically-related income and benefits from sources outside the University. Coach shall report the source and amount of all such income and benefits to the President whenever reasonably requested, but in no event less than annually before the close of business on June 30th of each year or the last regular University work day preceding June 30th. The report shall be in a format reasonably satisfactory to University. In no event shall Coach accept or receive directly or indirectly any monies, benefits, or gratuities whatsoever from any person, association, corporation, University booster club, University alumni association, University foundation, or other benefactor, if the acceptance or receipt of the monies, benefits, or gratuities would violate applicable law or the policies, rules, and regulations of the University, the University's governing board, the Conference, or the NCAA. Sources of such income shall include, but are not limited to, the following: (a) income from annuities; (b) sports camps, clinics, speaking engagements, consultations, directorships, or related activities; (c) housing benefits (including preferential housing arrangements); (d) country club membership(s); (e) complimentary tickets (i.e., tickets to a Stampede game); (f) television and radio programs; (g) endorsement or consultation contracts with athletic shoe, apparel, or equipment manufacturers.

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

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

4.6 Other Coaching Opportunities. Coach shall not, under any circumstances, interview for, negotiate for, or accept employment as a coach at any other institution of higher education or with any professional sports team requiring performance of duties set forth herein prior to the expiration of this Agreement, without the prior approval of the Director. Such approval shall not unreasonably be withheld. Coach shall not negotiate for or accept employment, under any circumstances, as a coach at any other institution of higher education or with any professional sports team requiring the performance of the duties set forth herein without first giving ten (10) days prior written notice to the Director.

## **ARTICLE 5**

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

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

- a) A deliberate or major violation of Coach's duties under this agreement or the refusal or unwillingness of Coach to perform such duties in good faith and to the best of Coach's abilities;
- b) The failure of Coach to remedy any violation of any of the terms of this Agreement within thirty (30) days after written notice from the University;

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

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



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

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

5.2 Termination of Coach for Convenience of University.

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

5.2.2 In the event that University terminates this Agreement for its own convenience, University shall be obligated to pay to Coach, as liquidated damages and not a penalty, the "base salary" set forth in section 3.1.1(a), excluding all deductions required by law, on the regular paydays of the University until the Term of this Agreement ends or until Coach obtains reasonably comparable employment, whichever occurs first, provided however, in the event Coach obtains other employment after such termination, then the amount of compensation University pays will be adjusted and reduced by the amount of compensation paid Coach as a result of such other employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to the Coach under the other employment, then subtracting from this adjusted gross compensation deductions according to law. In addition, Coach will be entitled to continue the health insurance plan and group life insurance as if Coach remained a University employee until the term of this Agreement ends or until Coach obtains reasonably comparable employment or any other employment providing Coach with a reasonably comparable health plan and group life insurance, whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law. Coach specifically agrees to inform University within ten (10) business days of obtaining other employment and to advise University of all relevant terms of such employment, including without limitation, the nature and location of the employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise University shall constitute a material breach of this Agreement and University's obligation to pay compensation under this provision shall end. Coach agrees not to accept employment for compensation at less than the fair market value of Coach's services, as determined by all circumstances existing at the time of employment. Coach further agrees to repay to University all compensation paid by

University after the date Coach obtains other employment, to which Coach is not entitled under this provision.

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

5.2.4 In the event of non-renewal or termination of Coach's employment, Coach will use all accumulated annual leave prior to the end of the contract period.

**5.3 Termination by Coach for Convenience.**

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

5.3.2 The Coach may terminate this Agreement for convenience during its term by giving prior written notice to the University. Termination shall be effective ten (10) days after such written notice is given to the University. Such termination must occur at a time outside the Team's season (including NCAA post-season competition) so as to minimize the impact on the program.

5.3.3 If the Coach terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination. If the Coach terminates this Agreement for convenience, Coach shall pay to the University, as liquidated damages and not a penalty, for the breach of this Agreement the following sum: (a) if the Agreement is terminated on or before January 31, 2016, the sum of \$20,000.00; (b) if the Agreement is terminated between February 1, 2016 and January 31, 2017 and inclusive, the sum of \$10,000.00. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

5.3.4 The parties have both been represented by legal counsel in the contract negotiations and have bargained for and agreed to the foregoing liquidated damages

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

5.3.5 Except as provide elsewhere in this Agreement, if Coach terminates this Agreement for convenience, Coach shall forfeit to the extent permitted by law Coach's right to receive all supplemental compensation and other payments.

5.4 Termination Due to Disability or Death of Coach.

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

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

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

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

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

5.7 Waiver of Rights. Because the Coach is receiving a multi-year contract and the opportunity to receive supplemental compensation and because such contracts and opportunities are not customarily afforded to University employees, if the University suspends or reassigns Coach, or terminates this Agreement for good or adequate cause or for convenience, Coach shall have all the rights provided for in this Agreement but hereby releases the University from compliance with the notice, appeal, and similar employment-related rights provided for in the State Board of Education Rule Manual (ID. ADMIN. CODE r. 08.01.01 et seq.) and Governing Policies and Procedures Manual, and the University Policies.

## ARTICLE 6

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

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

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

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

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

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

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

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

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

6.10 Notices. Any notice under this Agreement shall be in writing and be delivered in person or by public or private courier service (including U.S. Postal Service Express Mail) or certified mail with return receipt requested or by facsimile. 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:

the University:                      Boise State University  
Director of Athletics  
1910 University Drive  
Boise, Idaho 83725-1020

with a copy to:                      Boise State University  
Office of the President  
1910 University Drive  
Boise, Idaho 83725-1000

the Coach:                              Shawn Garus  
last known address on file  
with University Human Resource Services

Any notice shall be deemed to have been given on the earlier of: (a) actual delivery or refusal to accept delivery, (b) the date of mailing by certified mail, or (c) the day

facsimile delivery is verified. Actual notice, however and from whoever received, shall always be effective.

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

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

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

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

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

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

IN WITNESS WHEREOF, the parties agree to the terms and conditions of this Agreement and the incorporated documents attached hereto and have executed this Agreement freely and agree to be bound hereby as of the Effective Date.

UNIVERSITY

COACH

\_\_\_\_\_  
Dr. Robert Kustra, President

\_\_\_\_\_  
Shawn Garus

Approved by the Board on the \_\_\_\_ day of \_\_\_\_\_, 2014.

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## EMPLOYMENT AGREEMENT

This Employment Agreement (the "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, ~~2012~~ ("Effective Date") by and between Boise State University ("University") and Shawn Garus ("Coach").

## ARTICLE 1

1.1. Employment. Subject to the terms and conditions of this Agreement, the University shall employ Coach as the head coach (~~the "Position"~~) of its intercollegiate women's volleyball (the "~~Position~~Team"). Coach represents and warrants that Coach is fully qualified to serve, and is available for employment, in this capacity.

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

1.3. Duties. Coach shall manage and supervise the University's ~~intercollegiate women's volleyball team~~ (the "~~Team~~") and shall perform such other duties in the University's athletic program as the Director may assign and as may be described elsewhere in this Agreement ~~and any addenda hereto.~~ Coach shall, to the best of Coach's ability, and consistent with University policies and procedures, perform all duties and responsibilities customarily associated with the Position.

## ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment ~~of two (2) years,~~ commencing on ~~July~~February 1, ~~2012~~2015 and terminating, without further notice to Coach, on January 31, ~~2015~~2017 (the "Term"), unless sooner terminated in accordance with other provisions of this Agreement.

2.2. Extension or Renewal. This Agreement is renewable solely upon an offer from the University on or before October 1, 2016 and an acceptance by Coach, both of which must be in writing and signed by the parties. Extension of the contract will be at the sole discretion of the University and not based on athletic or academic achievement. Any renewal is subject to the prior approval of University's Board ~~of Trustees~~Education. This Agreement in no way grants to Coach a claim to tenure in employment, nor shall Coach's service pursuant to this Agreement count in any way toward tenure at the University.



|

## ARTICLE 3

3.1 Regular Compensation.

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

- a) A salary in the amount ~~set forth in the attached Addendum~~ of \$87,610 per year, payable in biweekly installments in accordance with normal University procedures ~~(except as provided in the Addendum)~~, and such salary increases as may be determined appropriate by the Director and President and approved by the University's Board of Trustees;
- b) The opportunity to receive such employee benefits calculated on the "base salary" as the University provides generally to non-faculty exempt employees; and
- c) The opportunity to receive such employee benefits as the University's Department of Athletics (the "Department") provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

3.2 Supplemental Compensation. ~~University~~Coach may ~~provide~~earn supplemental compensation, as ~~set forth in the attached Addendum~~follows:

~~3.2.1~~3.2.1. Academic Achievement Incentive Pay. Coach shall qualify for Academic Incentive Pay if the single year team Academic Progress Rate ("APR") for the Team meets the following levels in the National Ranking within Women's Volleyball:

<u>National Score within Sport</u>		
<u>970-974</u>	<u>=</u>	<u>\$1,500</u>
<u>975-979</u>	<u>=</u>	<u>\$1,750</u>
<u>980-984</u>	<u>=</u>	<u>\$2,000</u>
<u>985 and above</u>	<u>=</u>	<u>\$5,000</u>

If Coach qualifies for Academic Incentive Pay, it will be paid as soon as reasonably practical following APR rating determination and verification by the NCAA, if Coach is still employed by the University on that date.

3.2.2. Athletic Achievement Incentive Pay. Coach may qualify for Athletic Incentive Pay as follows:

<u>Conference Championship:</u>	<u>\$5,000</u>
<u>OR</u>	
<u>Qualify team for NCAA Tournament:</u>	<u>\$3,000</u>
<u>Top 25 National Ranking at End of Season:</u>	<u>\$2,500</u>
<u>NCAA Regional Coach of the Year:</u>	<u>\$3,000</u>
<u>NCAA National Coach of the Year:</u>	<u>\$5,000</u>
<u>Conference Coach of the Year:</u>	<u>\$3,000</u>
<u>Winning Record:</u>	<u>\$1,500</u>

If Coach qualifies for Athletic Incentive Pay under this Section, University will pay Coach on the first regular pay date in February 2014 if Coach is still employed by the University on that date.

### 3.2.3. Conditions for payment of Academic and Athletic Achievement Incentive supplemental compensation

Any such supplemental compensation paid to Coach shall be accompanied with a detailed justification for the supplemental compensation and such justification shall be separately reported to the Board of Trustees as a document available to the public under the Idaho Public Records Act.

3.2.24 The Coach may receive the compensation hereunder from the University or the University's designated media outlet(s) or a combination thereof each year during the term of this Agreement in compensation for participation in media programs and public appearances (collectively, "Programs"). Agreements requiring the Coach to participate in Programs related to Coach's duties as an employee of University are the property of the University. The University shall have the exclusive right to negotiate and contract with all producers of media productions and all parties desiring public appearances by the Coach. Coach agrees to cooperate with the University in order for the Programs to be successful and agrees to provide Coach's services to and appear on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither Coach nor any assistant coach shall appear without the prior written approval of the Director on any radio or television program (including but not limited to a coach's show, call-in show, or interview show) or a regularly scheduled news segment, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Director, Coach shall not appear in any commercial endorsements which are broadcast on radio or television that conflict with those broadcast on the University's designated media outlets.

3.2.35 Coach agrees that the University has the exclusive right to operate athletic camps ("Camps") on its campus using University facilities. The University shall allow Coach the opportunity to earn supplemental compensation by assisting with the Camps in Coach's capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the Camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the Camps, the University shall pay Coach supplemental compensation.

3.2.6 Coach agrees that the University has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff, including Coach, during official practices and games and during times when Coach or the Team is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of University. In order to avoid entering into an agreement with a competitor of any University selected vendors, Coach shall submit all outside consulting agreements to the University for review and approval prior to execution. Coach shall also report such outside income to the University in accordance with National Collegiate Athletic Association (the "NCAA") rules. Coach further agrees that Coach will not endorse any athletic footwear, apparel and/or equipment products, and will not participate in any messages or promotional appearances which contain a comparative or qualitative description of athletic footwear, apparel, or equipment products.

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

#### ARTICLE 4

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

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

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

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

4.1.4. Know, recognize, and comply with all applicable laws and the policies, rules and regulations of the University, the University's governing board, the conference of which the University is a member (the "Conference"), and the NCAA; supervise and take appropriate steps to ensure that Coach's assistant coaches, any other employees for whom Coach is administratively responsible, and the members of the Team know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the Director and to the University's ~~Executive~~ Director of ~~NCAA~~ Compliance if Coach has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall cooperate fully with the University and Department at all times. The applicable laws, policies, rules, and regulations include the following, as they may be amended from time-to-time: (a) State Board of Education ~~and Board of Regents of the University of Idaho~~ Governing Policies and Procedures and Rule Manual; (b) University's Policy ~~Handbook~~; ~~(c) University's Administrative Procedures~~ Manual; ~~(dc)~~ the policies of the Department; ~~(ed)~~ NCAA rules and regulations; and ~~(fe)~~ the rules and regulations of the Conference.

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

4.3 Outside Income. In accordance with NCAA rules, Coach shall obtain prior written approval from the President and Director for all athletically-related income and benefits from sources outside the University. Coach shall report the source and amount of all such income and benefits to the President whenever reasonably requested, but in no event less than annually before the close of business on June 30th of each year or the last regular University work day preceding June 30th. The report shall be in a format reasonably satisfactory to University. In no event shall Coach accept or receive directly or indirectly any monies, benefits, or gratuities whatsoever from any person, association, corporation, University booster club, University alumni association, University foundation, or other benefactor, if the acceptance or receipt of the monies, benefits, or gratuities would violate applicable law or the policies, rules, and regulations of the University, the University's governing board, the Conference, or the NCAA. Sources of such income shall include, but are not limited to, the following: (a) income

from annuities; (b) sports camps, clinics, speaking engagements, consultations, directorships, or related activities; (c) housing benefits (including preferential housing arrangements); (d) country club membership(s); (e) complimentary tickets (i.e., tickets to a Stampede game); (f) television and radio programs; (g) endorsement or consultation contracts with athletic shoe, apparel, or equipment manufacturers.

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

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

4.6 Other Coaching Opportunities. Coach shall not, under any circumstances, interview for, negotiate for, or accept employment as a coach at any other institution of higher education or with any professional sports team requiring performance of duties set forth herein prior to the expiration of this Agreement, without the prior approval of the Director. Such approval shall not unreasonably be withheld. Coach shall not negotiate for or accept employment, under any circumstances, as a coach at any other institution of higher education or with any professional sports team requiring the performance of the duties set forth herein without first giving ten (10) days prior written notice to the Director.

## ARTICLE 5

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

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

- a) A deliberate or major violation of Coach's duties under this agreement or the refusal or unwillingness of Coach to perform such duties in good faith and to the best of Coach's abilities;

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

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

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

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

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

5.2 Termination of Coach for Convenience of University.

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

5.2.2 In the event that University terminates this Agreement for its own convenience, University shall be obligated to pay to Coach, as liquidated damages and not a penalty, the "base salary" set forth in section 3.1.1(a), excluding all deductions required by law, on the regular paydays of the University until the Term of this Agreement ends or until Coach obtains reasonably comparable employment, whichever occurs first, provided however, in the event Coach obtains other employment after such termination, then the amount of compensation University pays will be adjusted and reduced by the amount of compensation paid Coach as a result of such other employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to the Coach under the other employment, then subtracting from this adjusted gross compensation deductions according to law. In addition, Coach will be entitled to continue the health insurance plan and group life insurance as if Coach remained a University employee until the term of this Agreement ends or until Coach obtains reasonably comparable employment or any other employment providing Coach with a reasonably comparable health plan and group life insurance, whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law. Coach specifically agrees to inform University within ten (10) business days of obtaining other employment and to advise University of all relevant terms of such employment, including without limitation, the nature and location of the employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise University shall constitute a material breach of this



Agreement and University's obligation to pay compensation under this provision shall end. Coach agrees not to accept employment for compensation at less than the fair market value of Coach's services, as determined by all circumstances existing at the time of employment. Coach further agrees to repay to University all compensation paid by University after the date Coach obtains other employment, to which Coach is not entitled under this provision.

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

5.2.4 In the event of non-renewal or termination of Coach's employment, Coach will use all accumulated annual leave prior to the end of the contract period.

5.3 Termination by Coach for Convenience.

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

5.3.2 The Coach may terminate this Agreement for convenience during its term by giving prior written notice to the University. Termination shall be effective ten (10) days after such written notice is given to the University. Such termination must occur at a time outside the Team's season (including NCAA post-season competition) so as to minimize the impact on the program.

5.3.3 If the Coach terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination. If the Coach terminates this Agreement for convenience, Coach shall pay to the University, as liquidated damages and not a penalty, for the breach of this Agreement the following sum: (a) if the Agreement is terminated on or before January 31, ~~2013~~2016, the sum of \$20,000.00; (b) if the Agreement is terminated between February 1, ~~2013~~2016 and January 31, ~~2014~~2017 and inclusive, the sum of \$10,000.00. The liquidated damages

shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

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

5.3.5 Except as provide elsewhere in this Agreement, if Coach terminates this Agreement for convenience, Coach shall forfeit to the extent permitted by law Coach's right to receive all supplemental compensation and other payments.

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

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

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

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

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

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

5.7 Waiver of Rights. Because the Coach is receiving a multi-year contract and the opportunity to receive supplemental compensation and because such contracts and opportunities are not customarily afforded to University employees, if the University suspends or reassigns Coach, or terminates this Agreement for good or adequate cause or for convenience, Coach shall have all the rights provided for in this Agreement but hereby releases the University from compliance with the notice, appeal, and similar employment-related rights provided for in the State Board of Education ~~and Board of Regents of the University of Idaho Rules (ID-Rule Manual (ID. ADMIN. CODE r. 08.01.01 et seq.) and Governing Policies and Procedures Manual, and the University Policies or Faculty Staff Handbook.~~

## ARTICLE 6

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

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

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

6.4 Waiver. No waiver of any default in the performance of this Agreement shall be effective unless in writing and signed by the waiving party. The waiver of a particular breach in the performance of this Agreement shall not constitute a waiver of

any other or subsequent breach. The resort to a particular remedy upon a breach shall not constitute a waiver of any other available remedies.

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

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

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

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

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

6.10 Notices. Any notice under this Agreement shall be in writing and be delivered in person or by public or private courier service (including U.S. Postal Service Express Mail) or certified mail with return receipt requested or by facsimile. 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:

the University:                      Boise State University  
   Director of Athletics  
   1910 University Drive  
   Boise, Idaho 83725-1020

with a copy to:                      Boise State University  
   Office of the President  
   1910 University Drive  
   Boise, Idaho 83725-1000

the Coach: Shawn Garus  
1910 last known address on file  
with University Drive Human Resource Services  
Boise, Idaho 83725-1025

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

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

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

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

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

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

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

IN WITNESS WHEREOF, the parties agree to the terms and conditions of this Agreement and the incorporated documents attached hereto and have executed this Agreement freely and agree to be bound hereby as of the Effective Date.

UNIVERSITY

COACH

Mark Coyle, Director of Athletics

Shawn Garus

\_\_\_\_\_  
\_\_\_\_\_  
Dr. Robert Kustra, President

\_\_\_\_\_  
Shawn Garus  
\_\_\_\_\_

Approved by the Board on the \_\_\_\_ day of \_\_\_\_\_, ~~2012~~2014.

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**BOISE STATE UNIVERSITY**

Women's Volleyball APR History and National Percentile Rank

**SINGLE YEAR NCAA ACADEMIC PROGRESS RATE (APR) SCORES**

	2009-10	2010-11	2011-12	2012-13
<b>Women's Volleyball</b>	950	1000	1000	1000
<i>National % Rank by Sport</i>	<i>0-10</i>	<i>90-100</i>	<i>90-100</i>	<i>90-100</i>

**REPORT YEAR**

Raw Score for single year

*Percentile Rank for Sport***MULTI-YEAR (4-Year Rolling Average)**

<b>Women's Volleyball</b>	927	948	957	994
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**BUSINESS AFFAIRS AND HUMAN RESOURCES  
DECEMBER 18, 2014**

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**BOISE STATE UNIVERSITY**

**SUBJECT**

Multi-year contract for Gordon Presnell, Head Women's Basketball Coach

**REFERENCE**

February 2011

The Idaho State Board of Education (Board) approved a five year employment agreement with Head Women's Basketball Coach Gordon Presnell

**APPLICABLE STATUTE, RULE, OR POLICY**

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

**BACKGROUND/DISCUSSION**

In January 2011, the Board approved a five year employment contract with Gordon Presnell as the new Head Women's Basketball Coach terminating March 31, 2015. Boise State University (BSU) requests approval to enter into a new multi-year contract with Coach Presnell as Head Women's Basketball Coach.

**IMPACT**

The new contract will be for two (2) years and three (3) months, December 19, 2014 – March 31, 2017. The salary is \$189,132, with incentives as follows:

**Academic Achievement**

Academic incentive pay may be earned if annual team APR ranks nationally within women's basketball above the 50th percentile as follows:

National Rank within Sport:

50th - 59.9%	\$5,000
60th - 69.9%	\$7,500
70th - 79.9%	\$10,000
80th % or above	\$12,500

In the event Gordon Presnell terminates the Agreement for convenience, the following liquidated damages will be due: \$40,000 for the first year, \$20,000 for the second year, or \$10,000 for the third year.

**Athletic Achievement**

Conference Regular Season Champions	\$10,000
The greater of the following two:	
Conference Tournament Finalist	\$3,000
Conference Tournament Champions	\$10,000
NCAA Tournament Appearance	\$5,000 per game
WNIT Appearance	\$3,000 per game
The greater of the following two:	

**BUSINESS AFFAIRS AND HUMAN RESOURCES  
DECEMBER 18, 2014**

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Winning Record (more wins than losses)	\$4,000
20 Wins	\$8,000

Maximum potential annual compensation (base salary and incentive payments) is \$237,632. In addition, the coach may operate additional summer camps at BSU pursuant to the proposed agreement.

**ATTACHMENTS**

Attachment 1 – Clean version of Proposed Contract	Page 3
Attachment 2 – Redline Compare of the 2011-2015 to Proposed	Page 17
Attachment 3 – 4 Year APR Scores	Page 31

**STAFF COMMENTS AND RECOMMENDATIONS**

The base pay in the employment agreement reflects a 0.4% increase over the Coach's current base salary (or 8.1% over the base salary originally approved in 2011). The maximum proposed incentive pay for academic achievement is \$12,500 which is more than any other athletic incentive amount. The proposed employment agreement is in substantial conformance with the Board's model contract.

The Athletic Committee met on December 16 to review this contract and will provide its recommendation at the December 18 Board meeting.

**BOARD ACTION**

I move to approve the request by Boise State University to enter into a two year, three month employment agreement with Gordon Presnell, Head Women's Basketball Coach, commencing on December 19, 2014 and terminating on March 31, 2017, at a base salary of \$189,132 and supplemental compensation provisions, as submitted.

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

**EMPLOYMENT AGREEMENT**

This Employment Agreement (the “Agreement”) is entered into by and between Boise State University (the “University”) and Gordon H. Presnell (“Coach”).

**ARTICLE 1**

1.1. Employment. Subject to the terms and conditions of this Agreement, the University shall employ Coach as the head coach (the “Position”) of its intercollegiate Women’s Basketball team (the “Team”). Coach represents and warrants that Coach is fully qualified to serve, and is available for employment, in this capacity.

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

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

**ARTICLE 2**

2.1. Term. This Agreement is for a fixed-term appointment of two (2) years three months, commencing on December 19, 2014 and terminating without further notice to Coach on March 31, 2017 (the “Term”) unless sooner terminated in accordance with other provisions of this Agreement.

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

2.3 Automatic Extensions. The term of this Agreement will automatically be extended by one (1) additional year commencing on April 1 and concluding on March 31

for each season in which the team has at least eighteen (18) wins. For the purpose of calculation of wins, such wins must occur during the regular season, the conference tournament, the Women's National Invitation Tournament ("WNIT"), or the National Collegiate Athletic Association ("NCAA") Tournament, to the exclusion of all other pre-season exhibition games or post-season tournaments.

**ARTICLE 3**

**3.1 Regular Compensation.**

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

- a) A salary of \$189,132 per year, payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the Director and President and approved by the University's Board of Trustees;
- b) The opportunity to receive such employee benefits calculated on the "base salary" set forth in set forth in section 3.1.1(a) as the University provides generally to non-faculty exempt employees; and
- c) The opportunity to receive such employee benefits as the University's Department of Athletics (the "Department") provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

3.2 Supplemental Compensation. Coach may earn supplemental compensation as follows:

**3.2.1 Athletic Achievement**

- a) Conference Regular Season Champions \$10,000
- b) The greater of the following two:
  - Conference Tournament Finalist \$3,000
  - Conference Tournament Champions \$10,000
- c) NCAA Tournament Appearance \$5,000 per game
- d) WNIT Appearance \$3,000 per game
- e) The greater of the following two:
  - Winning Record (more wins than losses) \$4,000

20 Wins

\$8,000

**3.2.2 Academic Achievement**

Academic Incentive Pay may be earned if annual team APR ranks nationally within women's basketball above the 50th percentile as follows:

**National Rank Within Sport**

50th - 59.9%	=	\$5,000
60th - 69.9%	=	\$7,500
70th - 79.9 %	=	\$10,000
80th % or above	=	\$12,500

**3.2.3 Conditions for payment of Academic and Athletic supplemental compensation:**

a. If Coach qualifies for Athletic Achievement Supplemental Compensation pursuant to section 3.2.1, University will pay Coach on the first regular pay date in July, following the year in which such supplemental compensation is calculated but only if Coach is still employed by the University on that date. Ranking shall be determined based on NCAA National End of Season Ranking.

b. If Coach qualifies for Academic Achievement Supplemental Compensation pursuant to section 3.2.2, it will be paid as soon as reasonably practical following APR rating determination and verification by the NCAA, if Coach is still employed by the University on that date.

c. In order to receive any of the 3.2.1 supplemental compensation, the Team's retention rate must be at least 50% for the academic year in which the supplemental pay is earned. The retention rate will be calculated anew each year and will not be cumulative.

3.2.4 Each year Coach may be eligible to receive supplemental compensation based on the overall development of the intercollegiate women's basketball program; ticket sales; fundraising; outreach by Coach to various constituency groups, including University students, staff, faculty, alumni and boosters; and any other factors the President wishes to consider. The determination of whether Coach will receive such supplemental compensation and the timing of the payment(s) shall be at the sole discretion of the President in consultation with the Director and approved by the University's Board of Trustees.

3.2.5 The Coach may receive compensation hereunder from the University's designated media outlet(s) or a combination thereof each year during the term of this Agreement in compensation for participation in media programs and public appearances (collectively, "Programs"). Agreements requiring the Coach to participate in Programs related to his duties as an employee of University are the property of the University. The University shall have the

exclusive right to negotiate and contract with all producers of media productions and all parties desiring public appearances by the Coach. Coach agrees to cooperate with the University in order for the Programs to be successful and agrees to provide his services to and perform on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither Coach nor any assistant coaches shall appear without the prior written approval of the Director on any competing radio or television program (including, but not limited to, a coach's show, call-in show, or interview show) or a regularly scheduled news segment, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Director, Coach shall not appear in any commercial endorsements, which are broadcast on radio or television that conflict with those broadcast on the University's designated media outlets.

3.2.6 Summer Camp Operated by the University. Coach agrees that the University has the exclusive right to operate youth basketball camps on its campus using University facilities. The University shall allow Coach the opportunity to earn supplemental compensation by assisting with the University's camps in Coach's capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the University's basketball camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the University's summer basketball camps, the University shall pay Coach a reasonable supplemental compensation during each year of his employment as head coach at the University. The summer youth camp must be operated by Coach in a manner that reflects positively on the University and the Department. The Coach complies with all NCAA, Conference, and University rules and regulations related, directly or indirectly, to the operation of summer youth camps. All revenues and expenses of the Camp shall be deposited with and paid by the University.

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

3.2.7 Coach agrees that the University has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff, including Coach, during official practices and games and during times when Coach or the Team is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of University. Coach recognizes that the University has the authority to enter into an agreement with a company to supply the University with athletic footwear, apparel and/or equipment. Coach agrees that, upon the University's reasonable request, Coach will consult with appropriate parties concerning a product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by the University's designated company, or give a lecture at an event sponsored in whole or in part by said company, or make other educationally-related appearances as may be reasonably requested by the University. Notwithstanding the foregoing sentence, Coach shall retain the right to decline such appearances as Coach reasonably determines to conflict with or hinder his duties and obligations as head basketball coach. In order to avoid entering into an agreement with a competitor of the University's designated

company, Coach shall submit all outside consulting agreements to the University for review and approval prior to execution. Coach shall also report such outside income to the University in accordance with NCAA rules. Coach further agrees that Coach will not endorse any athletic footwear, apparel and/or equipment products and will not participate in any messages or promotional appearances which contain a comparative or qualitative description of athletic footwear, apparel, or equipment products.

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

#### **ARTICLE 4**

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

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

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

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

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



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

4.3 Outside Income. In accordance with NCAA rules, Coach shall obtain prior written approval from the President and Director for all athletically related income and benefits from sources outside the University and shall report the source and amount of all such income and benefits to the University's President whenever reasonably requested, but in no event less than annually before the close of business on June 30th of each year or the last regular University work day preceding June 30th. The report shall be in a format reasonably satisfactory to University. In no event shall Coach accept or receive directly or indirectly any monies, benefits, or gratuities whatsoever from any person, association, corporation, University booster club, University alumni association, University foundation, or other benefactor, if the acceptance or receipt of the monies, benefits, or gratuities would violate applicable law or the policies, rules, and regulations of the University, the University's governing board, the Conference, or the NCAA. Sources of such income shall include, but are not limited to, the following: (a) income from annuities; (b) sports camps, clinics, speaking engagements, consultations, directorships, or related activities; (c) housing benefits (including preferential housing arrangements); (d) country club membership(s); (e) complimentary tickets (i.e., tickets to a Stampede game); (f) television and radio programs; (g) endorsement or consultation contracts with athletic shoe, apparel, or equipment manufacturers.

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

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

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

Such approval shall not unreasonably be withheld. Without first giving ten (10) days prior written notice to the Director, Coach shall not negotiate for or accept employment, under any circumstances, as a coach at any other institution of higher education or with any professional sports team requiring the performance of the duties set forth herein.

4.7 Specific Duties of Coach. The Coach is expected to devote full-time to coaching and recruitment involving the Team as the head coach. The Coach will attend all staff meetings, public relation functions, dinners, awards banquet and make appearances as directed by the Director unless excused by the Director. Such functions shall include, but are not limited to, the following:

- a) The annual BAA barbecue
- b) The weekly BAA function during the relevant season;
- c) The annual BAA Endowment dinner;
- d) The BSU Athletic Hall of Fame dinner;
- e) The BAA Bronze Bronco Award banquet;
- f) The BAA/Alumni Auction dinner;
- g) All Department staff meetings called by the Director;
- h) Athletic Department Graduation Reception;
- i) Bronco Golf Series Tournaments.

## **ARTICLE 5**

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

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

- a) A deliberate or major violation of Coach's duties under this Agreement or the refusal or unwillingness of Coach to perform such duties in good faith and to the best of Coach's abilities;
- b) The failure of Coach to remedy any violation of any of the terms of this Agreement within thirty (30) days after written notice from the University;
- c) A deliberate or major violation by Coach of any applicable law or the rules, regulations, or policies, of the University, the University's governing board, the Conference or the NCAA, including, but not limited to, any such violation which may have occurred during the employment of Coach at another NCAA or National Association of Intercollegiate Athletics ("NAIA") member institution;

- d) Ten (10) working days absence of Coach from duty without the University's consent;
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the University's judgment, reflect adversely on the University or its athletic programs;
- f) The failure of Coach to represent the University and its athletic programs positively in public and private forums;
- g) The failure of Coach to fully and promptly cooperate with the NCAA or the University in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, the University's governing board, the Conference, or the NCAA;
- h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the Conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team; or
- i) A violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the Conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team if Coach knew or should have known by ordinary supervision of the violation and could have prevented it by such ordinary supervision.

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

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

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

5.2 Termination of Coach for Convenience of University.

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

5.2.2 In the event that University terminates this Agreement for its own convenience, University shall be obligated to pay Coach, as liquidated damages and not a penalty, the "base salary amount set forth in section 3.1.1(a), excluding all deductions required by law, on the regular paydays of University until the Term of this Agreement ends or until Coach obtains reasonably comparable employment, whichever occurs first, provided, however, in the event Coach obtains other employment after such termination, then the amount of compensation the University pays will be adjusted and reduced by the amount of compensation paid Coach as a result of such other employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to Coach under the other employment, then subtracting from this adjusted gross compensation deduction according to law. In addition, Coach will be entitled to continue his health insurance plan and group life insurance as if he remained a University employee until the term of this Agreement ends or until Coach obtains reasonably comparable employment or any other employment providing Coach with a reasonably comparable health plan and group life insurance, whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law. Coach specifically agrees to inform University within ten business days of obtaining other employment, and to advise University of all relevant terms of such employment, including without limitation the nature and location of the employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise University shall constitute a material breach of this Agreement and University's obligation to pay compensation under this provision shall end. Coach agrees not to accept employment for compensation at less than the fair market value of Coach's services, as determined by all circumstances existing at the time of employment. Coach further agrees to repay to University all compensation paid to him by University after the date he obtains other employment, to which he is not entitled under this provision.

5.2.3 The parties have both been represented by, or had the opportunity to be represented by legal counsel in the contract negotiations and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the Coach may lose certain benefits, supplemental compensation, or outside compensation relating to his employment with University, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by University and the acceptance thereof by Coach shall constitute adequate and reasonable compensation to Coach for the damages and injury suffered by

Coach because of such termination by University. The liquidated damages are not, and shall not be construed to be, a penalty.

5.2.4 In the event of non-renewal or termination of Coach's employment, Coach will use all accumulated annual leave prior to the end of the contract period.

**5.3 Termination by Coach for Convenience.**

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

5.3.2 The Coach, for his own convenience, may terminate this Agreement during its term by giving prior written notice to the University. Termination shall be effective ten (10) days after notice is given to the University. Such termination must occur at a time outside the Team's season (including NCAA post-season competition) so as to minimize the impact on the program.

5.3.3 If the Coach terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination. If the Coach terminates this Agreement for his convenience he shall pay to the University, as liquidated damages and not a penalty, for the breach of this Agreement the following sum: (a) if the Agreement is terminated on or before March 31, 2015, the sum of \$40,000; (b) if the Agreement is terminated between April 1, 2015 and March 31, 2016 inclusive, the sum of \$20,000; (c) if the Agreement is terminated between April 1, 2016 and March 16, 2017 inclusive, the sum of \$10,000. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

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

5.3.5 Except as provided elsewhere in this Agreement, if Coach terminates this Agreement for convenience, he shall forfeit to the extent permitted by law his right to receive all supplemental compensation and other payments and all accumulated leave.

5.4 Termination Due to Disability or Death of Coach.

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

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

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

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

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

5.7 Waiver of Rights. Because the Coach is receiving a multi-year contract and the opportunity to receive supplemental compensation and because such contracts and opportunities are not customarily afforded to University employees, if the University suspends or reassigns Coach, or terminates this Agreement for good or adequate cause or for convenience, Coach shall have all the rights provided for in this Agreement but hereby releases the University from compliance with the notice, appeal, and similar employment-related rights provided for in the State Board of Education and Board Rule Manual (ID ADMIN. CODE 08.01.01 et seq) and Governing Policies and Procedures Manual, and the University Policies.

**ARTICLE 6**

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

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

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

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

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

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

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

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

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

6.10 Notices. Any notice under this Agreement shall be in writing and be delivered in person or by public or private courier service (including U.S. Postal Service Express Mail) or certified mail with return receipt requested or by facsimile. 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:

the University:                      Director of Athletics  
Boise State University  
1910 University Drive  
Boise, Idaho 83725-1020

with a copy to:                      Office of the President  
Boise State University  
1910 University Drive  
Boise, Idaho 83725-1000

the Coach:                              Gordon H. Presnell  
Last known address on file with  
University's Human Resource Services

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

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

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

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

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



## ATTACHMENT 1

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

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

IN WITNESS WHEREOF, the parties agree to the terms and conditions of this Agreement and the incorporated documents attached hereto and have executed this Agreement freely and agree to be bound hereby as of the Effective Date.

UNIVERSITY

COACH

\_\_\_\_\_  
Robert Kustra, President

\_\_\_\_\_  
Date

\_\_\_\_\_  
Gordon H. Presnell

\_\_\_\_\_  
Date

Approved by the Board on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

## EMPLOYMENT AGREEMENT

This Employment Agreement (~~the “Agreement”~~) is entered into by and between Boise State University, (~~the “University”~~) and Gordon H. Presnell, (~~“Coach”~~).

### ARTICLE 1

1.1. Employment. Subject to the terms and conditions of this Agreement, the University shall employ Coach as the head coach (~~the “Position”~~) of its intercollegiate Women’s Basketball team (~~the “Team”~~). Coach represents and warrants that Coach is fully qualified to serve, and is available for employment, in this capacity.

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

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

### ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of ~~five (5)~~ two (2) years ~~three months~~, commencing on ~~April 1, 2010~~ December 19, 2014 and terminating without further notice to Coach on March 31, ~~2015~~ 2017 (~~the “Term”~~) unless sooner terminated in accordance with other provisions of this Agreement.

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

2.3 Automatic Extensions. The term of this Agreement will automatically be extended by one (1) additional year commencing on April 1 and concluding on March 31 for

each season in which the team has at least eighteen (18) wins. For the purpose of calculation of wins, such wins must occur during the regular season, the conference tournament, the Women's National Invitation Tournament ("WNIT"), or the National Collegiate Athletic Association ("NCAA") Tournament, to the exclusion of all other pre-season exhibition games or post-season tournaments.

### ARTICLE 3

#### 3.1 Regular Compensation.

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

- a) ~~An annual~~ salary of ~~\$174,900~~\$189,132 per year, payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the Director and President and approved by the University's Board of Trustees;
- b) The opportunity to receive such employee benefits calculated on the "base salary" set forth in set forth in section 3.1.1(a) as the University provides generally to non-faculty exempt employees; and
- c) The opportunity to receive such employee benefits as the University's Department of Athletics (the "Department") provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.

3.2 Supplemental Compensation. Coach may earn supplemental compensation as follows:

#### 3.2.1 Athletic Achievement

- a) ~~WAC~~Conference Regular Season Champions  
~~—————\$5~~\$10,000
- b) The greater of the following two:
 

<del>WAC</del> <u>Conference</u> Tournament Finalist	<del>—————\$3,000</del>
<del>WAC</del> <u>Conference</u> Tournament Champions	<u>\$15</u> <u>10,000</u>
- c) NCAA Tournament ~~Appearances~~Appearance \$5,000 per game
- d) WNIT Appearance \$3,000 per game

<del>e)</del>	<del>20 Wins</del>	<del>\$4,000</del>
<del>f)</del>	<del>e) The greater of the following two:</del>	
	Winning Record (more wins than losses)	\$4,000
	<u>20 Wins</u>	<u>\$8,000</u>

### 3.2.2 Academic Achievement

Academic Incentive Pay may be earned if your 4 year annual team APR ranks nationally ~~within your sport~~ women's basketball above the 50th percentile as follows:

#### National Rank Within Sport

50th - 59.9%	=	\$5,000
60th - 69.9%	=	\$7,500
70th - 79.9 %	=	\$10,000
80th % or above	=	\$12,500

### 3.2.3 Conditions for payment of Academic and Athletic supplemental compensation:

a. ~~Payment date for academic achievement supplemental compensation and for athletic achievement supplemental compensation shall be made July 1<sup>st</sup> of each year following the completion of the season in which it is earned. If Coach qualifies for Athletic Achievement Supplemental Compensation pursuant to section 3.2.1, University will pay Coach on the first regular pay date in July, following the year in which such supplemental compensation is calculated but only if Coach is still employed by the University on that date. Ranking shall be determined based on NCAA National End of Season Ranking.~~

b. If Coach qualifies for Academic Achievement Supplemental Compensation pursuant to section 3.2.2, it will be paid as soon as reasonably practical following APR rating determination and verification by the NCAA, if Coach is still employed by the University on that date.

c. In order to receive any of the 3.2.1 supplemental compensation, the ~~basketball team's~~ Team's retention rate must be at least 50% for the academic year in which the supplemental pay is earned. The retention rate will be calculated anew each year and will not be cumulative.

3.2.4 Each year Coach may be eligible to receive supplemental compensation based on the overall development of the intercollegiate women's basketball program; ticket sales; fundraising; outreach by Coach to various constituency groups, including University students, staff, faculty, alumni and boosters; and any other factors the President wishes to consider. The determination of whether Coach will receive such supplemental compensation and

the timing of the payment(s) shall be at the sole discretion of the President in consultation with the Director and approved by the University's Board of Trustees.

3.2.5 The Coach ~~shall~~may receive ~~the sum of \$5,100 annually~~compensation hereunder from the University's designated media outlet(s) or a combination thereof each year during the term of this Agreement in compensation for participation in media programs and public appearances (collectively, "Programs). ~~This sum shall be paid monthly.~~ Agreements requiring the Coach to participate in Programs related to his duties as an employee of University are the property of the University. The University shall have the exclusive right to negotiate and contract with all producers of media productions and all parties desiring public appearances by the Coach. Coach agrees to cooperate with the University in order for the Programs to be successful and agrees to provide his services to and perform on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither ~~each~~Coach nor any assistant coaches shall appear without the prior written approval of the Director on any competing radio or television program (including, but not limited to, a coach's show, call-in show, or interview show) or a regularly scheduled news segment, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Director, Coach shall not appear in any commercial endorsements, which are broadcast on radio or television that conflict with those broadcast on the University's designated media outlets.

3.2.6 Summer Camp Operated by the University. Coach agrees that the University has the exclusive right to operate youth basketball camps on its campus using University facilities. The University shall allow Coach the opportunity to earn supplemental compensation by assisting with the University's camps in Coach's~~Coach's~~ capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the University's basketball camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the University's summer basketball camps, ~~the University shall pay Coach a reasonable supplemental compensation during each year of his employment as head coach at the University.~~ The summer youth camp must be operated by Coach in a manner that reflects positively on the University and the Department. The Coach complies with all NCAA, Conference, and University rules and regulations related, directly or indirectly, to the operation of summer youth camps. All revenues and expenses of the Camp shall be deposited with and paid by the University.

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

3.2.7 Coach agrees that the University has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff, including Coach, during official practices and games and during times when Coach or the Team is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of University. Coach recognizes that the University has the authority to enter into an agreement with a company to supply the University with athletic footwear, apparel and/or

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

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

#### ARTICLE 4

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

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

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

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

4.1.4. Know, recognize, and comply with all applicable laws and the policies, rules and regulations of the University, the University's University's governing board, the conference, of which the University is a member (the "Conference"), and the NCAA; supervise and take appropriate steps to ensure that Coach's assistant coaches, any other employees for whom Coach is administratively responsible, and the members of the Team know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the Director and to the Department's University's Director of NCAA Compliance if Coach has reasonable

cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Coach shall cooperate fully with the University and Department at all times. The names or titles of employees whom Coach supervises ~~are attached as Exhibit C.~~ will be provided periodically to Coach by the University. The applicable laws, policies, rules, and regulations include: (a) State Board of Education Governing Policies and Procedures and Rule Manual; (b) ~~University's Policies;~~ the University's Policy Manual; ~~(c) University's Administrative Procedures~~ (d) the policies of the Department; ~~(e)~~ (ed) NCAA rules and regulations; and ~~(f)~~ (fe) the rules and regulations of the ~~Western Athletic Conference (WAC).~~

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

4.3 NCAA Rules Outside Income. In accordance with NCAA rules, Coach shall obtain prior written approval from the ~~University's~~ University's President and Director for all athletically related income and benefits from sources outside the University and shall report the source and amount of all such income and benefits to the University's President whenever reasonably requested, but in no event less than annually before the close of business on June 30th of each year or the last regular University work day preceding June 30th. The report shall be in a format reasonably satisfactory to University. In no event shall Coach accept or receive directly or indirectly any monies, benefits, or gratuities whatsoever from any person, association, corporation, University booster club, University alumni association, University foundation, or other benefactor, if the acceptance or receipt of the monies, benefits, or gratuities would violate applicable law or the policies, rules, and regulations of the University, the ~~University's governing board, the conference, or the NCAA~~ University's governing board, the Conference, or the NCAA. Sources of such income shall include, but are not limited to, the following: (a) income from annuities; (b) sports camps, clinics, speaking engagements, consultations, directorships, or related activities; (c) housing benefits (including preferential housing arrangements); (d) country club membership(s); (e) complimentary tickets (i.e., tickets to a Stampede game); (f) television and radio programs; (g) endorsement or consultation contracts with athletic shoe, apparel, or equipment manufacturers.

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



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

4.6 Other Coaching Opportunities. Coach shall not, under any circumstances, interview for, negotiate for, or accept employment as a coach at any other institution of higher education or with any professional sports team, requiring performance of duties prior to the expiration of this Agreement, without the prior approval of the Director. Such approval shall not unreasonably be withheld. Without first giving ten (10) days prior written notice to the Director, Coach shall not negotiate for or accept employment, under any circumstances, as a coach at any other institution of higher education or with any professional sports team requiring the performance of the duties set forth herein.

4.7 Specific Duties of Coach. The Coach is expected to devote full-time to coaching and recruitment involving the ~~Women's Basketball team~~Team as the ~~Head Coach~~head coach. The Coach will attend all staff meetings, public relation functions, dinners, awards banquet and make appearances as directed by ~~Athletic~~the Director unless excused by ~~Athletic~~the Director. Such functions shall include, but are not limited to, the following:

- a) The annual BAA barbecue
- b) The weekly BAA function during the relevant season;
- c) The annual BAA Endowment dinner;
- d) The BSU Athletic Hall of Fame dinner;
- e) The BAA Bronze Bronco Award banquet;
- f) The BAA/Alumni Auction dinner;
- g) All ~~Athletic~~ Department staff meetings called by ~~Athletic~~the Director;
- h) Athletic Department Graduation Reception;
- i) Bronco Golf Series Tournaments.

## ARTICLE 5

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

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

- a) A deliberate or major violation of Coach's duties under this Agreement or the refusal or unwillingness of Coach to perform such duties in good faith and to the best of Coach's abilities;
- b) The failure of Coach to remedy any violation of any of the terms of this ~~agreement~~Agreement within thirty (30) days after written notice from the University;



- c) A deliberate or major violation by Coach of any applicable law or the ~~policies, rules or~~ regulations, or policies, of the University, the University's governing board, the ~~conference~~Conference or the NCAA, including, but not limited to, any such violation which may have occurred during the employment of Coach at another NCAA or National Association of Intercollegiate Athletics ("NAIA") member institution;
- d) Ten (~~20~~10) working days absence of Coach from duty without the University's consent;
- ~~d)e)~~ Any conduct of Coach that constitutes moral turpitude or that would, in the University's judgment, reflect adversely on the University or its athletic programs;
- e)f) The failure of Coach to represent the University and its athletic programs positively in public and private forums;
- ~~f)g)~~ The failure of Coach to fully and promptly cooperate with the NCAA or the University in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, the University's governing board, the ~~conference~~Conference, or the NCAA;
- ~~g)h)~~ The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the ~~conference~~Conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team; or
- ~~h)i)~~ A violation of any applicable law or the policies, rules or regulations of the University, the University's governing board, the ~~conference~~Conference, or the NCAA, by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team if Coach knew or should have known by ordinary supervision of the violation and could have prevented it by such ordinary supervision.

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

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

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

## 5.2 Termination of Coach for Convenience of University.

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

5.2.2 In the event that University terminates this Agreement for its own convenience, University shall be obligated to pay Coach, as liquidated damages and not a penalty, the "base salary set forth in section 3.1.1(a) and the amount set forth in section 3.2.5, 1.1(a), excluding all deductions required by law, on the regular paydays of University until the term of this Agreement ends; or until Coach obtains reasonably comparable employment, whichever occurs first, provided, however, in the event Coach obtains other employment of any kind or nature after such termination, then the amount of compensation the University pays will be adjusted and reduced by the amount of compensation paid Coach as a result of such other employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.1(a) and the amount set forth in section 3.2.5 (before deductions required by law) by the gross compensation paid to Coach under the other employment, then subtracting from this adjusted gross compensation deduction according to law. In addition, Coach will be entitled to continue his health insurance plan and group life insurance as if he remained a University employee until the term of this Agreement ends or until Coach obtains reasonably comparable employment or any other employment providing Coach with a reasonably comparable health plan and group life insurance, whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law. Coach specifically agrees to inform University within ten business days of obtaining other employment, and to advise University of all relevant terms of such employment, including without limitation the nature and location of the employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise University shall constitute a material breach of this Agreement and University's obligation to pay compensation under this provision shall end. Coach agrees not to accept employment for compensation at less than the fair market value of Coach's services, as determined by all circumstances existing at the time of employment. Coach further agrees to repay to University all compensation paid to him by University after the date he obtains other employment, to which he is not entitled under this provision.

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

5.2.4 In the event of non-renewal or termination of Coach's employment, Coach will use all accumulated annual leave prior to the end of the contract period.

### 5.3 Termination by Coach for Convenience.

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

5.3.2 The Coach, for his own convenience, may terminate this Agreement during its term by giving prior written notice to the University. Termination shall be effective ten (10) days after notice is given to the University. Such termination must occur at a time outside the Team's season (including NCAA post-season competition) so as to minimize the impact on the program.

5.3.3 If the Coach terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination. If the Coach terminates this Agreement for his convenience he shall pay to the University, as liquidated damages and not a penalty, for the breach of this Agreement the following sum: (a) if the Agreement is terminated on or before ~~June 1, 2014~~March 31, 2015, the sum of ~~\$6040,000~~; (b) if the Agreement is terminated between ~~June~~April 1, ~~2014, 2015~~ and ~~May~~March 31, ~~2012~~2016 inclusive, the sum of ~~\$4520,000~~; (c) if the Agreement is terminated between ~~June~~April 1, ~~2012~~2016 and ~~May 31, 2013~~March 16, 2017 inclusive, the sum of ~~\$3010,000~~. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

5.3.4 The parties have both had opportunity to be represented by legal counsel in the contract negotiations and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the University will incur administrative and recruiting costs in obtaining a replacement for Coach, in addition to potentially increased compensation costs if Coach terminates this Agreement for convenience, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of

such liquidated damages by Coach and the acceptance thereof by University shall constitute adequate and reasonable compensation to University for the damages and injury suffered by it because of such termination by Coach. The liquidated damages are not, and shall not be construed to be, a penalty. This section 5.3.4 shall not apply if Coach terminated this Agreement because of a material breach by the University.

5.3.5 Except as provided elsewhere in this Agreement, if Coach terminates this Agreement for convenience, he shall forfeit to the extent permitted by law his right to receive all supplemental compensation and other payments and all accumulated leave.

#### 5.4 Termination ~~due~~Due to Disability or Death of Coach.

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

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

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

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

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

5.7 Waiver of Rights. Because the Coach is receiving a multi-year contract and the opportunity to receive supplemental compensation and because such contracts and opportunities are not customarily afforded to University employees, if the University suspends or reassigns Coach, or terminates this Agreement for good or adequate cause or for convenience, Coach shall

have all the rights provided for in this Agreement but hereby releases the University from compliance with the notice, appeal, and similar employment-related rights provided for in the State Board of Education and Board Rule Manual (~~IDAPA-08~~[ID ADMIN. CODE 08.01.01 et seq](#)) and Governing Policies and Procedures Manual, and the University Policies.

## ARTICLE 6

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

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

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

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

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

6.6 Governing Law. This Agreement shall be subject to and construed in accordance with the laws of the State of Idaho as an agreement to be performed in Idaho. Any action based in whole or in part on this Agreement shall be brought in the ~~courts of the State of~~[state district court in Ada County, Boise](#), Idaho.

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

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

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

6.10 Notices. Any notice under this Agreement shall be in writing and be delivered in person or by public or private courier service (including U.S. Postal Service Express Mail) or certified mail with return receipt requested or by facsimile. 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:

the University:                      Director of Athletics  
    Boise State University  
    1910 University Drive  
    Boise, Idaho 83725-1020

with a copy to:                      Office of the President  
    Boise State University  
    1910 University Drive  
    Boise, Idaho 83725-1000

the Coach:                              Gordon H. Presnell  
    Last known address on file with  
    University'sUniversity's Human Resource Services

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

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

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

6.13 Non-Use of Names and Trademarks. The Coach shall not, without the University'sUniversity's prior written consent in each case, use any name, trade name,

trademark, or other designation of the University (including contraction, abbreviation or simulation), except in the course and scope of his official University duties.

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

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

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

IN WITNESS WHEREOF, the parties agree to the terms and conditions of this Agreement and the incorporated documents attached hereto and have executed this Agreement freely and agree to be bound hereby as of the Effective Date.

UNIVERSITY

COACH

\_\_\_\_\_  
Robert Kustra, President                      Date

\_\_\_\_\_  
Gordon H. Presnell                      Date

Approved by the SBOE~~Board~~ on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.



**BOISE STATE UNIVERSITY**

Women's Basketball APR History and National Percentile Rank

**SINGLE YEAR NCAA ACADEMIC PROGRESS RATE (APR) SCORES**

	2009-10	2010-11	2011-12	2012-13
<b>Women's Basketball</b>	926	1000	1000	962
<i>National % Rank by Sport</i>	<i>0-10</i>	<i>90-100</i>	<i>90-100</i>	<i>20-30</i>

**REPORT YEAR**

Raw Score for single year

*Percentile Rank for Sport***MULTI-YEAR (4-Year Rolling Average)**

<b>Women's Basketball</b>	982	991	990	981
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**BUSINESS AFFAIRS AND HUMAN RESOURCES  
DECEMBER 18, 2014**

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**IDAHO STATE UNIVERSITY**

**SUBJECT**

Multi-year employment agreement for Michael D. Kramer, Head Football Coach

**REFERENCE**

February 2011

The Idaho State Board of Education (Board) approved a five year employment agreement with Head Football Coach Michael Kramer

**APPLICABLE STATUTE, RULE OR POLICY**

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

**BACKGROUND/DISCUSSION**

Idaho State University (ISU) is requesting approval for a new three-year, one-month employment agreement for Michael D. Kramer, Head Football Coach (his current contract expires on January 21, 2015). The employment agreement contains the duties, responsibilities and conditions of employment. A model contract matrix of the employment agreement that identifies departures from the model contract form and provides justification for these changes is included as Attachment 3. The position is funded by state appropriated funds.

**IMPACT**

The annual salary for this position is \$154,523.20 per year plus supplemental compensation incentives as set forth below.

Athletic Incentive Pay may be earned as follows:

Conference Champion or Co-Champion			\$5,943
NCAA Championship Playoffs			\$5,943
Average Attendance at Home Games			
6,000 – 6,999	=	\$2,000	
7,000 – 7,999	=	\$4,000	
8,000 – 8,999	=	\$6,000	
9,000 – 9,999	=	\$8,000	
10,000+	=	\$10,000	
Big Sky Conference Coach of the Year			\$5,943
Game Wins			
8 wins:	=	\$2,000	
9 wins	=	\$4,000	
10 wins	=	\$6,000	
11 wins	=	\$8,000	
12 wins	=	\$10,000	
NCAA Men's Football Tournament			
Play-In	8 Teams	1 <sup>st</sup> win	\$5,000
Round 2	16 Teams	2 <sup>nd</sup> win	\$5,000

**BUSINESS AFFAIRS AND HUMAN RESOURCES  
DECEMBER 18, 2014**

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Round 3	8 Teams	3 <sup>rd</sup> win	\$5,000
Round 4	4 Teams	4 <sup>th</sup> win	\$8,000
Round 6	2 Teams	5 <sup>th</sup> win	\$10,000
Possible National Championship Winner Total:			\$28,000 / \$33,000

Game Guarantee ("Money Games") = 1% of contractual payment if team loses and 3% if team wins.

Maximum potential annual compensation (base salary and estimated maximum potential incentive except for Game Guarantee) is \$225,352.80.

The Coach is also eligible to receive other supplemental compensation through University operated summer camps.

Liquidated damages for the Coach terminating the contract early for his own convenience are \$30,000 for the first year, \$20,000 for the second year and \$10,000 for the third year.

**ATTACHMENTS**

Attachment 1	Employment Agreement	Page 5
Attachment 2	Employment Agreement – Redline To Model Contract	Page 19
Attachment 3	Model Contract Matrix Changes	Page 37
Attachment 4	4 Year APR Scores	Page 39

**STAFF AND COMMENTS AND RECOMMENDATIONS**

The base pay in the employment agreement reflects a 10% increase over the Coach's current base salary. The university requests this increase in recognition of program success this season under the coach's leadership and in an effort to make his salary more competitive for retention purposes.

This contract includes two unique types of incentive payments which haven't been considered by the Board before. First, there is an incentive for the Coach to schedule money games to counteract any disincentive these games might otherwise create based on other incentive payments (e.g. game wins). Second, there is incentive pay for achieving levels of average attendance at home games. The rationale being that strong attendance generates gate revenue, builds excitement and creates fan loyalty.

In addition, under the proposed contract the Head Coach would not be eligible to receive supplemental compensation based on APR scores. In an effort to drive more money down to his assistant coaches, the Coach requested academic incentive compensation be paid to assistant coaches as follows: Each year, assistant coaches shall be eligible to receive in equal shares supplemental compensation in an aggregate amount of up to \$8,000 based on the single-year APR score achievement and behavior of Team members. The incentive is stratified as follows:

**BUSINESS AFFAIRS AND HUMAN RESOURCES  
DECEMBER 18, 2014**

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970-979	= \$2,000
980-989	= \$4,000
990-999	= \$6,000
1,000	= \$8,000

Board policy provides that "Each contract for a head coach or athletic director shall include incentives in the form of supplemental compensation, separate from any other incentives, based upon the academic performance of the student athletes whom the coach or athletic director supervises." As such, approval of ISU's proposed contract would require a waiver of Board policy.

This contract exercises the option under Board policy to provide that the Coach does not accrue any annual leave but rather takes leave with prior written approval of the athletic director.

The Athletic Committee met on December 16 to review this contract and will provide its recommendation at the December 18 Board meeting.

**BOARD ACTION**

I move to waive Board Policy II.H.3 only with respect to the requirement that a coach contract include supplemental compensation incentive based upon academic performance, and only for purposes of the contract submitted as Attachment 1.

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

I move to approve the request by Idaho State University to enter into a three year, one month employment agreement with Michael D. Kramer, Head Basketball Coach, commencing on December 19, 2014 and terminating on January 21, 2018, at a base salary of \$154,523.20 and supplemental compensation provisions, as submitted.

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

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## EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between Idaho State University (University) and Michael D. Kramer (Coach).

### ARTICLE 1

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

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

1.3. Duties. Coach shall manage and supervise the Team and shall perform such other duties in the University's athletic program as the Director may assign and as may be described elsewhere in this Agreement. The University shall have the right, at any time, to reassign Coach to duties at the University other than as head coach of the Team, provided that Coach's compensation and benefits shall not be affected by any such reassignment, except that the opportunity to earn supplemental compensation as provided in sections 3.2.1 through 3.2.9 shall cease.

### ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of three (3) years, one (1) month, commencing on December 19, 2014 and terminating, without further notice to Coach, on January 21, 2018 unless sooner terminated in accordance with other provisions of this Agreement.

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

### ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual salary of \$154,523.20 per year, payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the Director and President and approved by the University's Board of Trustees);
- b) The opportunity to receive such employee benefits as the University provides generally to non-faculty exempt employees; and
- c) The opportunity to receive such employee benefits as the University's Department of Athletics (Department) provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits. Provided, however, that Coach agrees he does not accrue leave, but may take leave with prior written approval from the Director. Coach acknowledges by acceptance of this Contract that all annual leave accrued under Coach's prior contract of employment has been used or paid off, or is hereby forfeited.

### 3.2 Supplemental Compensation

3.2.1. Each year the Team is the conference champion or co-champion, and if Coach continues to be employed as University's head Football coach as of the ensuing July 1st, the University shall pay to Coach supplemental compensation in an amount equal to two week's pay ( $2/52 \times \text{Annual Salary}$ ) of Coach's Annual Salary during the fiscal year in which the championship is achieved. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.2. Each year the Team competes for the NCAA Football Championship Subdivision post-season playoffs, and if Coach continues to be employed as University's head Football coach as of the ensuing July 1st, the University shall pay to Coach supplemental compensation in an amount equal to two week's pay ( $2/52 \times \text{Annual Salary}$ ) of Coach's Annual Salary during the fiscal year in which the post-season participation are achieved. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

Coach shall not be eligible to receive supplemental compensation based on APR scores. In consideration of Coach's waiver of such supplemental compensation, University agrees that supplemental compensation may be paid to assistant football

coaches as follows: Each year, assistant football coaches shall be eligible to receive in equal shares supplemental compensation in an aggregate amount of up to \$8,000 based on the single-year APR score achievement and behavior of Team members. Said amount shall be payable only if Coach continues to be employed as University head Football coach as of the ensuing July 1st, and shall be payable only to assistant coaches who continue to be employed by the University as assistant coaches as of the ensuing July 1st. The determination of whether assistant coaches will receive such supplemental compensation and the timing of the payment(s) shall be at the discretion of the President in consultation with the Director and approved by the University's Board of Trustees. The determination shall be based on the following factors: the conduct of Team members on the University campus, at authorized University activities, in the community, and elsewhere and the Team's single-year ranking based on attainment of the following levels:

<u>Team APR Ranking</u>	<u>Incentive Pay</u>
Score of 970-979	\$ 2,000.00
Score of 980-989	\$ 4,000.00
Score of 990-999	\$ 6,000.00
Score of 1,000	\$ 8,000.00

Any such supplemental compensation paid to Coach shall be accompanied with a detailed justification for the supplemental compensation based on the factors listed above and such justification shall be separately reported to the Board of Trustees as a document available to the public under the Idaho Public Records Act.

3.2.4 Each year the Coach shall have the opportunity to receive supplemental compensation for achieving an average attendance at home Football games at the following levels, and if Coach continues to be employed as University's head Football coach as of the ensuing July 1st, the University shall pay to Coach supplemental compensation in amounts equal to the following. Average attendance numbers shall be determined and announced by the University Ticket office. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation:

6,000-6,999	\$ 2,000.00
7,000-7,999	\$ 4,000.00
8,000-8,999	\$ 6,000.00
9,000-9,999	\$ 8,000.00
10,000+	\$10,000.00

3.2.5 Each year the Coach earns recognition as the Big Sky Conference Football Coach of the Year, and if Coach continues to be employed as University's head Football coach as of the ensuing July 1st, the University shall pay to Coach supplemental compensation in an amount equal to two week's pay ( $2/52 \times$  Annual Salary) of Coach's Annual Salary during the fiscal year in which the Big Sky Conference



Football Coach of the Year recognition is achieved. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.6 Each year the Coach shall have the opportunity to receive supplemental compensation for achieving a predetermined number of wins, and if Coach continues to be employed as University's head Football coach as of the ensuing July 1st, the University shall pay to Coach supplemental compensation in an amount equal to the following:

8 wins:	\$ 2,000.00
9 wins:	\$ 4,000.00
10 wins:	\$ 6,000.00
11 wins:	\$ 8,000.00
12 wins:	\$10,000.00

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

3.2.7 Each year the Team advances in the NCAA Football Championship Subdivision post-season playoffs, and if Coach continues to be employed as University's head Football coach as of the ensuing July 1st, the University shall pay Coach supplemental compensation in an amount equal to the terms below. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

Play-in	8 Teams	1 <sup>st</sup> win	\$5,000.00
Round 2	16 Teams	2 <sup>nd</sup> win	\$5,000.00
Round 3	8 Teams	3 <sup>rd</sup> win	\$5,000.00
Round 4	4 Teams	4 <sup>th</sup> win	\$8,000.00
Round 5	2 Teams	5 <sup>th</sup> win	\$10,000.00

Possible national championship winner computation bonus total:  
\$28,000.00/\$33,000.00

3.2.8 Each year the Coach shall have the opportunity to receive supplemental compensation for the Team's participation in "money games" (where another team pays the Team to play them at the other team's location). If Coach continues to be employed as University's head Football coach as of the ensuing July 1st, the University shall pay to Coach supplemental compensation for each such money game in an amount equal to either: (a) one percent (1%) of contractual payment received by the University for participation in the money game if the Team loses the money game; or (b) three percent (3%) of contractual payment received by the University if the Team wins the game.

3.2.9 **(SUMMER CAMP—OPERATED BY UNIVERSITY)** Coach agrees that the University has the exclusive right to operate youth Football camps on its

campus using University facilities. The University shall allow Coach the opportunity to earn supplemental compensation by assisting with the University's camps in Coach's capacity as a University employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the University's football camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the University's summer football camps, the University shall pay Coach any net revenues resulting from the camp per year as supplemental compensation during each year of his employment as head Football coach at the University, or direct those net revenues as an enhancement to the Football program budget at the University. This amount shall be paid within 30 days after all camp billed have been paid.

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

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

#### ARTICLE 4

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

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

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

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

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

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

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

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

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

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

## **ARTICLE 5**

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

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

- a) A deliberate or major violation of Coach's duties under this agreement or the refusal or unwillingness of Coach to perform such duties in good faith and to the best of Coach's abilities;

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

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

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

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

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

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

5.2.2 In the event that University terminates this Agreement for its own convenience, University shall be obligated to pay Coach, as liquidated damages and not a penalty, the salary set forth in section 3.1.1(a), excluding all deductions required by law, on the regular paydays of University until the term of this Agreement ends; provided, however, in the event Coach obtains other employment of any kind or nature after such termination, then the amount of compensation the University pays will be adjusted and reduced by the amount of compensation paid Coach as a result of such other employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to Coach under the other employment, then subtracting from this adjusted gross compensation deduction according to law. In addition, Coach will be entitled to continue his health insurance plan and group life insurance as if he remained a University employee until the term of this Agreement ends or until Coach obtains employment or any other employment providing Coach with a reasonably comparable health plan and group life insurance, whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law. Coach specifically agrees to inform University within ten business days of obtaining other employment, and to advise University of all relevant terms of such employment, including without limitation the nature and location of employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise University shall constitute a material breach of this Agreement and University's obligation to pay compensation under this provision shall end. Coach agrees not to accept employment for compensation at less than the fair value of Coach's services, as determined by all circumstances existing at the time of employment. Coach further agrees to repay to

University all compensation paid to him by University after the date he obtains other employment, to which he is not entitled under this provision.

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

**5.3 Termination by Coach for Convenience.**

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

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

5.3.3 If the Coach terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination. If the Coach terminates this Agreement for his convenience he shall pay to the University, as liquidated damages and not a penalty, for the breach of this Agreement the following sum: (a) if the Agreement is terminated on or before January 20, 2016, the sum of \$30,000.00; (b) if the Agreement is terminated between January 21, 2016 and January 20, 2017 inclusive, the sum of \$20,000.00; (c) if the Agreement is terminated between January 21, 2017 and January 20, 2018 inclusive, the sum of \$10,000.00. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

5.3.4 The parties have both been represented by legal counsel in the contract negotiations and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the University will incur administrative and recruiting costs in obtaining a replacement for Coach, in addition to potentially increased compensation costs if Coach terminates this Agreement for convenience, which damages are extremely difficult to determine with certainty. The

parties further agree that the payment of such liquidated damages by Coach and the acceptance thereof by University shall constitute adequate and reasonable compensation to University for the damages and injury suffered by it because of such termination by Coach. The liquidated damages are not, and shall not be construed to be, a penalty. This section 5.3.4 shall not apply if Coach terminates this Agreement because of a material breach by the University.

5.3.5 Except as provide elsewhere in this Agreement, if Coach terminates this Agreement for convenience, he shall forfeit to the extent permitted by law his right to receive all supplemental compensation and other payments.

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

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

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

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

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

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

5.7 Waiver of Rights. Because the Coach is receiving a multi-year contract and the opportunity to receive supplemental compensation and because such contracts



and opportunities are not customarily afforded to University employees, if the University suspends or reassigns Coach, or terminates this Agreement for good or adequate cause or for convenience, Coach shall have all the rights provided for in this Agreement but hereby releases the University from compliance with the notice, appeal, and similar employment-related rights provide for in the State Board of Education and Board or Regents of the University of Idaho Rule Manual (IDAPA 08) and Governing Policies and Procedures Manual, and the University Faculty-Staff Handbook.

**ARTICLE 6**

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

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

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

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

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

6.6 Governing Law. This Agreement shall be subject to and construed in accordance with the laws of the state of Idaho as an agreement to be performed in

Idaho. Any action based in whole or in part on this Agreement shall be brought in the courts of the state of Idaho.

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

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

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

6.10 Notices. Any notice under this Agreement shall be in writing and be delivered in person or by public or private courier service (including U.S. Postal Service Express Mail) or certified mail with return receipt requested or by facsimile. 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:

the University:            Director of Athletics

Jeffrey K. Tingey  
921 S. 8<sup>th</sup> Ave. Stop 8173  
Pocatello, ID 83209-8173

with a copy to:            President Arthur Vailas  
921 S. 8<sup>th</sup> Ave. Stop  
Pocatello, ID 83209-

the Coach:                Michael D. Kramer  
Last known address on file with  
University's Human Resource Services

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

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

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

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

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

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

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

IDAHO STATE UNIVERSITY

COACH

\_\_\_\_\_  
Arthur C. Vailas, President      Date

\_\_\_\_\_  
Michael D. Kramer      Date

Approved by the Board of Trustees on the \_\_\_\_ day of \_\_\_\_\_, 2014.

~~(MODEL ATHLETICS CONTRACT)~~**EMPLOYMENT AGREEMENT**

This Employment Agreement (Agreement) is entered into by and between  
~~\_\_\_\_\_~~ Idaho State University (College); University and  
~~\_\_\_\_\_~~ Michael D. Kramer (Coach).

**ARTICLE 1**

1.1. **Employment.** Subject to the terms and conditions of this Agreement, the University ~~(College)~~ shall employ Coach as the head coach of its intercollegiate ~~(Sport) — football~~ team (Team) ~~(or Director of Athletics).~~ Coach ~~(Director)~~ represents and warrants that Coach is fully qualified to serve, and is available for employment, in this capacity.

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

1.3. **Duties.** Coach shall manage and supervise the Team and shall perform such other duties in the University (College)'s University's athletic program as the Director may assign and as may be described elsewhere in this Agreement. The University ~~(College)~~ shall have the right, at any time, to reassign Coach to duties at the University ~~(College)~~ other than as head coach of the Team, provided that Coach's compensation and benefits shall not be affected by any such reassignment, except that the opportunity to earn supplemental compensation as provided in sections 3.2.1 through ~~(Depending on supplemental pay provisions used) — 3.2.9~~ shall cease.

**ARTICLE 2**

2.1. **Term.** This Agreement is for a fixed-term appointment of ~~\_\_\_\_\_~~ (—three (3) years, one (1) month, commencing on December 19, 2014 and terminating, without further notice to Coach, on January 21, 2018 unless sooner terminated in accordance with other provisions of this Agreement.

2.2. **Extension or Renewal.** This Agreement is renewable solely upon an offer from the University ~~(College)~~ and an acceptance by Coach, both of which must be in writing and signed by the parties. Any renewal is subject to the prior approval of the University's Board of Education Trustees. This Agreement in no way grants to Coach

a claim to tenure in employment, nor shall Coach's service pursuant to this agreement count in any way toward tenure at the University ~~(College)~~.

### ARTICLE 3

#### 3.1 Regular Compensation.

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

- a) An annual salary of \$ ~~\_\_\_\_\_~~ \$154,523.20 per year, payable in biweekly installments in accordance with normal University ~~(College)~~ procedures, and such salary increases as may be determined appropriate by the Director and ~~Chief executive officer~~ President and approved by the ~~University (College)'s~~ University's Board of ~~(Regents or Trustees)~~ \_\_\_\_\_ ~~;~~ ;
- b) The opportunity to receive such employee benefits as the University ~~(College)~~ provides generally to non-faculty exempt employees; and
- c) The opportunity to receive such employee benefits as the ~~University (College)'s~~ University's Department of Athletics (Department) provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits. Provided, however, that Coach agrees he does not accrue leave, but may take leave with prior written approval from the Director. Coach acknowledges by acceptance of this Contract that all annual leave accrued under Coach's prior contract of employment has been used or paid off, or is hereby forfeited.

#### 3.2 Supplemental Compensation

3.2.1. Each year the Team is the conference champion or co-champion ~~and also becomes eligible for a (bowl game pursuant to NCAA Division I guidelines or post-season tournament or post-season playoffs)~~, and if Coach continues to be employed as ~~University (College)'s~~ University's head ~~(Sport)~~ Football coach as of the ensuing July 1st, the University ~~(College)~~ shall pay to Coach supplemental compensation in an amount equal to ~~(amount or computation)~~ of two week's pay (2/52 x Annual Salary) of Coach's Annual Salary during the fiscal year in which the championship ~~and (bowl or other post-season) eligibility are~~ is achieved. The

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

~~3.2.2—~~

~~3.2.2.~~ Each year the Team ~~is ranked in~~ competes for the ~~top 25 in the (national rankings of sport's division)~~ NCAA Football Championship Subdivision post-season playoffs, and if Coach continues to be employed as University (College)'s University's head ~~—(Sport)—~~ Football coach as of the ensuing July 1st, the University ~~(College)~~ shall pay to Coach supplemental compensation in an amount equal to ~~—(amount or computation)—~~ of Coach's two week's pay (2/52 x Annual Salary) of Coach's Annual Salary during the fiscal year in effect on which the date of the final poll. post-season participation are achieved. The University ~~(College)~~ shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

~~3.2.3~~ ~~Each year~~ Coach shall not be eligible to receive supplemental compensation based on APR scores. In consideration of Coach's waiver of such supplemental compensation, University agrees that supplemental compensation may be paid to assistant football coaches as follows: Each year, assistant football coaches shall be eligible to receive in equal shares supplemental compensation in an aggregate amount of up to ~~(amount or computation)~~ \$8,000 based on the ~~academics~~ single-year APR score achievement and behavior of Team members. Said amount shall be payable only if Coach continues to be employed as University head Football coach as of the ensuing July 1st, and shall be payable only to assistant coaches who continue to be employed by the University as assistant coaches as of the ensuing July 1st. The determination of whether ~~Coach~~ assistant coaches will receive such supplemental compensation and the timing of the payment(s) shall be at the discretion of the ~~Chief executive officer~~ President in consultation with the Director, and approved by the University's Board of Trustees. The determination shall be based on the following factors: the ~~Academic Progress Rate set by the Board, grade point averages; difficulty of major course of study; honors such as scholarships, designation as Academic All-American, and conference academic recognition; progress toward graduation for all athletes, but particularly those who entered the University (College) as academically at-risk students;~~ the conduct of Team members on the University ~~(College)~~ campus, at authorized University ~~(College)~~ activities, in the community, and elsewhere—and the Team's single-year ranking based on attainment of the following levels:

<u>Team APR Ranking</u>	<u>Incentive Pay</u>
<u>Score of 970-979</u>	<u>\$ 2,000.00</u>
<u>Score of 980-989</u>	<u>\$ 4,000.00</u>
<u>Score of 990-999</u>	<u>\$ 6,000.00</u>
<u>Score of 1,000</u>	<u>\$ 8,000.00</u>

Any such supplemental compensation paid to Coach shall be accompanied with a detailed justification for the supplemental compensation based on the factors listed above and such justification shall be separately reported to the Board of ~~(Regents or Trustees)~~ as a document available to the public under the Idaho Public Records Act.

3.2.4 Each year the Coach shall be eligible have the opportunity to receive supplemental compensation in an amount up to (amount or computation) based on the overall development of the intercollegiate (men's/women's) (Sport) program; ticket sales; fundraising; outreach by for achieving an average attendance at home Football games at the following levels, and if Coach to various constituency groups, including continues to be employed as University's head Football coach as of the ensuing July 1st, the University (College) students, staff, faculty, alumni and boosters; and any other factors the Chief executive officer wishes to consider. The determination of whether shall pay to Coach will receive such supplemental compensation and in a amounts equal to the timing of the payment(s) following. Average attendance numbers shall be at the discretion of the Chief executive officer in consultation with the Director.

determined and announced by the

~~3.2.5~~ The Coach shall receive the sum of (amount or computation) from the University (College) or the Ticket office. The University (College)'s designated media outlet(s) or a combination thereof each year during the term of this Agreement in compensation for participation in media programs and public appearances (Programs). Coach's right to receive such a payment shall vest on the date of the Team's last regular season or post-season competition, whichever occurs later. This sum determine the appropriate manner in which it shall be paid (terms or conditions of payment). Agreements requiring the Coach to participate in Programs related to his duties as an employee of University (College) are the property of the University (College). The University (College) shall have the exclusive right to negotiate and contract with all producers of media productions and all parties desiring public appearances by the Coach. Coach agrees to cooperate with the University (College) in order for the Programs to be successful and agrees to provide his services to and perform on the Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that neither Coach nor any assistant coaches shall appear without the prior written approval of the Director on any competing radio or television program (including but not limited to a coach's show, call-in show, or interview show) or a regularly scheduled news segment, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the Director, Coach shall not appear in any commercial endorsements which are broadcast on radio or television that conflict with those broadcast on the University (College)'s designated media outlets. pay Coach any such supplemental compensation:

<u>6,000-6,999</u>	<u>\$ 2,000.00</u>
<u>7,000-7,999</u>	<u>\$ 4,000.00</u>
<u>8,000-8,999</u>	<u>\$ 6,000.00</u>
<u>9,000-9,999</u>	<u>\$ 8,000.00</u>
<u>10,000+</u>	<u>\$10,000.00</u>

3.2.5 3.2.6—Each year the Coach earns recognition as the Big Sky Conference Football Coach of the Year, and if Coach continues to be employed as University's head Football coach as of the ensuing July 1st, the University shall pay to Coach supplemental compensation in an amount equal to two week's pay (2/52 x Annual Salary) of Coach's Annual Salary during the fiscal year in which the Big Sky Conference Football Coach of the Year recognition is achieved. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.6 Each year the Coach shall have the opportunity to receive supplemental compensation for achieving a predetermined number of wins, and if Coach continues to be employed as University's head Football coach as of the ensuing July 1st, the University shall pay to Coach supplemental compensation in an amount equal to the following:

8 wins:	\$ 2,000.00
9 wins:	\$ 4,000.00
10 wins:	\$ 6,000.00
11 wins:	\$ 8,000.00
12 wins:	\$10,000.00

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

3.2.7 Each year the Team advances in the NCAA Football Championship Subdivision post-season playoffs, and if Coach continues to be employed as University's head Football coach as of the ensuing July 1st, the University shall pay Coach supplemental compensation in an amount equal to the terms below. The University shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

Play-in	8 Teams	1 <sup>st</sup> win	\$5,000.00
Round 2	16 Teams	2 <sup>nd</sup> win	\$5,000.00
Round 3	8 Teams	3 <sup>rd</sup> win	\$5,000.00
Round 4	4 Teams	4 <sup>th</sup> win	\$8,000.00
Round 5	2 Teams	5 <sup>th</sup> win	\$10,000.00

Possible national championship winner computation bonus total:  
\$28,000.00/\$33,000.00

3.2.8 Each year the Coach shall have the opportunity to receive supplemental compensation for the Team's participation in "money games" (where another team pays the Team to play them at the other team's location). If Coach continues to be employed as University's head Football coach as of the ensuing July 1st, the University shall pay to Coach supplemental compensation for each such money game in an amount equal to either: (a) one percent (1%) of contractual payment



received by the University for participation in the money game if the Team loses the money game; or (b) three percent (3%) of contractual payment received by the University if the Team wins the game.

### 3.2.9 (SUMMER CAMP—OPERATED BY UNIVERSITY—(COLLEGE))

Coach agrees that the University (College) has the exclusive right to operate youth (Sport)—Football camps on its campus using University (College) facilities. The University (College) shall allow Coach the opportunity to earn supplemental compensation by assisting with the University (College)'sUniversity's camps in Coach's capacity as a University (College) employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the University (College)'sUniversity's football camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the University (College)'sUniversity's summer football camps, —the University (College) shall pay Coach (amount)—any net revenues resulting from the camp per year as supplemental compensation during each year of his employment as head (Sport)—Football coach at the University (College), or direct those net revenues as an enhancement to the Football program budget at the University. This amount shall be paid —(terms of payment)——within 30 days after all camp billed have been paid.

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

- a) The summer youth camp operation reflects positively on the University (College) and the Department;
- b) The summer youth camp is operated by Coach directly or through a private enterprise owned and managed by Coach. The Coach shall not use University (College) personnel, equipment, or facilities without the prior written approval of the Director;
- c) Assistant coaches at the University (College) are given priority when the Coach or the private enterprise selects coaches to participate;
- d) The Coach complies with all NCAA (NAIA), Conference, and University (College) rules and regulations related, directly or indirectly, to the operation of summer youth camps;
- e) The Coach or the private enterprise enters into a contract with University (College) and \_\_\_\_\_ (campus concessionaire) for all campus goods and services required by the camp.

- f) ~~The Coach or private enterprise pays for use of University (College) facilities including the \_\_\_\_\_.~~
- g) ~~Within thirty days of the last day of the summer youth camp(s), Coach shall submit to the Director a preliminary "Camp Summary Sheet" containing financial and other information related to the operation of the camp. Within ninety days of the last day of the summer youth camp(s), Coach shall submit to Director a final accounting and "Camp Summary Sheet." A copy of the "Camp Summary Sheet" is attached to this Agreement as an exhibit.~~
- h) ~~The Coach or the private enterprise shall provide proof of liability insurance as follows: (1) liability coverage: spectator and staff \$1 million; (2) catastrophic coverage: camper and staff \$1 million maximum coverage with \$100 deductible;~~
- i) ~~To the extent permitted by law, the Coach or the private enterprise shall defend and indemnify the University (College) against any claims, damages, or liabilities arising out of the operation of the summer youth camp(s)~~
- j) ~~All employees of the summer youth camp(s) shall be employees of the Coach or the private enterprise and not the University (College) while engaged in camp activities. The Coach and all other University (College) employees involved in the operation of the camp(s) shall be on annual leave status or leave without pay during the days the camp is in operation. The Coach or private enterprise shall provide workers' compensation insurance in accordance with Idaho law and comply in all respects with all federal and state wage and hour laws~~

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

3.2.710 Coach agrees that the University (College) has the exclusive right to select footwear, apparel and/or equipment for the use of its student-athletes and staff, including Coach, during official practices and games and during times when Coach or the Team is being filmed by motion picture or video camera or posing for photographs in their capacity as representatives of University (College). Coach recognizes that the University (College) is negotiating or has entered into an agreement with (Company Name) adidas to supply the University (College) with athletic

footwear, apparel and/or equipment. Coach agrees that, upon the University (College)'s reasonable request, Coach will consult with appropriate parties concerning an (Company Name) a adidas product's design or performance, shall act as an instructor at a clinic sponsored in whole or in part by (Company Name) adidas, or give a lecture at an event sponsored in whole or in part by (Company Name) adidas, or make other educationally-related appearances as may be reasonably requested by the University (College). Notwithstanding the foregoing sentence, Coach shall retain the right to decline such appearances as Coach reasonably determines to conflict with or hinder his duties and obligations as head (Sport) Football coach. In order to avoid entering into an agreement with a competitor of (Company Name) adidas, Coach shall submit all outside consulting agreements to the University (College) for review and approval prior to execution. Coach shall also report such outside income to the University (College) in accordance with NCAA (or NAIA) rules. Coach further agrees that Coach will not endorse any athletic footwear, apparel and/or equipment products, including (Company Name) adidas, and will not participate in any messages or promotional appearances which contain a comparative or qualitative description of athletic footwear, apparel or equipment products.

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

#### ARTICLE 4

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

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

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

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

4.1.4. Know, recognize, and comply with all applicable laws and the policies, rules and regulations of the University (College), the University

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

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

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

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

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

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

## ARTICLE 5

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

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

- a) A deliberate or major violation of Coach's duties under this agreement or the refusal or unwillingness of Coach to perform such duties in good faith and to the best of Coach's abilities;
- b) The failure of Coach to remedy any violation of any of the terms of this agreement within 30 days after written notice from the University~~(College)~~;
- c) A deliberate or major violation by Coach of any applicable law or the policies, rules or regulations of the University~~(College)~~, the ~~University~~(College)'s University's governing board, the conference or the NCAA~~(NAIA)~~, including but not limited to any such violation which may have occurred during the employment of Coach at another NCAA or ~~NAIA~~-member institution;

- d) Ten (10) working days' absence of Coach from duty without the University (College)'s University's consent;
- e) Any conduct of Coach that constitutes moral turpitude or that would, in the University (College)'s University's judgment, reflect adversely on the University (College) or its athletic programs;
- f) The failure of Coach to represent the University (College) and its athletic programs positively in public and private forums;
- g) The failure of Coach to fully and promptly cooperate with the NCAA (NAIA) or the University (College) in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University (College), the University (College)'s University's governing board, the conference, or the NCAA (NAIA);
- h) The failure of Coach to report a known violation of any applicable law or the policies, rules or regulations of the University (College), the University (College)'s University's governing board, the conference, or the NCAA (NAIA), by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team; or
- i) A violation of any applicable law or the policies, rules or regulations of the University (College), the University (College)'s University's governing board, the conference, or the NCAA (NAIA), by one of Coach's assistant coaches, any other employees for whom Coach is administratively responsible, or a member of the Team if Coach knew or should have known of the violation and could have prevented it by ordinary supervision.

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

5.1.3 In the event of any termination for good or adequate cause, the University (College)'s University's obligation to provide compensation and benefits to Coach, whether direct, indirect, supplemental or collateral, shall cease as of the date of such termination, and the University (College) shall not be liable for the loss of any



collateral business opportunities or other benefits, perquisites, or income resulting from outside activities or from any other sources.

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

## 5.2 Termination of Coach for Convenience of University ~~(College)~~.

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

5.2.2 In the event that University ~~(College)~~ terminates this Agreement for its own convenience, University ~~(College)~~ shall be obligated to pay Coach, as liquidated damages and not a penalty, the salary set forth in section 3.1.1(a), excluding all deductions required by law, on the regular paydays of University ~~(College)~~ until the term of this Agreement ends ~~or until Coach obtains reasonably comparable employment, whichever occurs first;~~ provided, however, in the event Coach obtains other employment of any kind or nature after such termination, then the amount of compensation the University pays will be adjusted and reduced by the amount of compensation paid Coach as a result of such other employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to Coach under the other employment, then subtracting from this adjusted gross compensation ~~deductions~~ deduction according to law. In addition, Coach will be entitled to continue his health insurance plan and group life insurance as if he remained a University ~~(College)~~ employee until the term of this Agreement ends or until Coach obtains ~~reasonably comparable~~ employment or any other employment providing Coach with a reasonably comparable health plan and group life insurance, whichever occurs first. Coach shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law. Coach specifically agrees to inform University within ten business days of obtaining other employment, and to advise University of all relevant terms of such employment, including without limitation the nature and location of employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise University shall constitute a material breach of this Agreement and University's obligation to pay compensation under this provision shall end. Coach agrees not to accept employment for compensation at less than the fair value of Coach's services, as determined by all circumstances existing at the time of employment. Coach further agrees to repay to University all compensation paid to him by University after the date he obtains other employment, to which he is not entitled under this provision.

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



### 5.3 Termination by Coach for Convenience.

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

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

5.3.3 If the Coach terminates this Agreement for convenience at any time, all obligations of the University ~~(College)~~ shall cease as of the effective date of the termination. If the Coach terminates this Agreement for his convenience he shall pay to the University ~~(College)~~, as liquidated damages and not a penalty, for the breach of this Agreement the following sum: \_\_\_\_\_ (a) if the Agreement is terminated on or before January 20, 2016, the sum of \$30,000.00; (b) if the Agreement is terminated between January 21, 2016 and January 20, 2017 inclusive, the sum of \$20,000.00; (c) if the Agreement is terminated between January 21, 2017 and January 20, 2018 inclusive, the sum of \$10,000.00. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

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

5.3.5 Except as ~~provided~~provide elsewhere in this Agreement, if Coach terminates this Agreement for convenience, he shall forfeit to the extent permitted by law his right to receive all supplemental compensation and other payments.

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

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

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

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

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

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

5.87 Waiver of Rights. Because the Coach is receiving a multi-year contract and the opportunity to receive supplemental compensation and because such contracts and opportunities are not customarily afforded to University (College) employees, if the University (College) suspends or reassigns Coach, or terminates this Agreement for good or adequate cause or for convenience, Coach shall have all the rights provided for in this Agreement but hereby releases the University (College) from compliance with the notice, appeal, and similar employment-related rights provide for in the State Board of Education and Board or Regents of the University of Idaho Rule Manual (IDAPA 08) and Governing Policies and Procedures, IDAPA 08.01.01 et seq., Manual, and the University (College) Faculty-Staff Handbook.

## ARTICLE 6

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

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

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

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

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

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

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

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

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

6.10 Notices. Any notice under this Agreement shall be in writing and be delivered in person or by public or private courier service (including U.S. Postal Service Express Mail) or certified mail with return receipt requested or by facsimile. 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:

the University (College): \_\_\_\_\_ Director of Athletics

\_\_\_\_\_  
\_\_\_\_\_

Jeffrey K. Tingey

921 S. 8<sup>th</sup> Ave. Stop 8173

Pocatello, ID 83209-8173

with a copy to: \_\_\_\_\_ Chief executive officer \_\_\_\_\_ President Arthur  
Vailas

\_\_\_\_\_  
921 S. 8<sup>th</sup> Ave. Stop

\_\_\_\_\_  
Pocatello, ID 83209-

the Coach:

\_\_\_\_\_  
Michael D. Kramer

Last known address on file with

University (College)'s University's Human Resource Services

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

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

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

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

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

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

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

IDAHO STATE UNIVERSITY (COLLEGE) \_\_\_\_\_  
COACH

\_\_\_\_\_, Chief executive officer Arthur C. Vailas, President Date \_\_\_\_\_  
\_\_\_\_\_, Michael D. Kramer Date \_\_\_\_\_

Approved by the Board of —(Regents or Trustees)— on the \_\_\_\_ day of \_\_\_\_\_, 20102014.

<b>MICHAEL D. KRAMER – FOOTBALL COACH - MULTI-YEAR CONTRACT  – SUBSTANTIVE MODIFICATIONS FROM SBOE FORM  (AS ADAPTED FROM MODEL COACH FORM)</b>			
	<b>MODEL CONTRACT SECTION</b>	<b>ISU CONTRACT SECTION</b>	<b>JUSTIFICATION FOR MODIFICATION</b>
1	3.2.1	3.2.1	To tie bonus compensation to performance in conference play.
2	3.2.2	3.2.2, 3.2.7	To tie bonus compensation to performance in post-season play.
3	3.2.3	3.2.3	To permit APR bonuses to be paid to assistant coaches rather than head coach.
4	3.2.4	3.2.4, 3.2.6	To create bonus incentive for increasing attendance at home games and winning more games, to meet objective of University.
5	---	3.2.8	To create incentive to Coach to schedule “money” games, which would tend to detract from Coach’s ability to earn other performance bonuses.
6	3.2.6	3.2.9	To incentivize Coach to participate in and manage the University-operated youth football camps by making all revenues from such camps, net of ISU’s expenses, available to the Coach as additional compensation or to supplement the football program budget. Coach has in the past used camp revenues to supplement program budget or provide additional compensation to assistant coaches. Provision on Coach-operated summer camps removed. To comply with IRS regulations, Coach will be required to designate the use of funds two months or more prior to the camp.

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IDAHO STATE UNIVERSITY  
Football APR History and National Percentile Rank

SINGLE YEAR NCAA ACADEMIC PROGRESS RATE (APR) SCORES

	2009-10	2010-11	2011-12	2012-13
Football	883	903	1000	975
National % Rank by Sport	1-10	1-10	1-10	30-40

REPORT YEAR
Raw Score for single year
Percentile Rank for Sport

MULTI-YEAR (4-Year Rolling Average)

Football	888	881	914	941
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**BUSINESS AFFAIRS AND HUMAN RESOURCES  
DECEMBER 18, 2014**

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**IDAHO STATE UNIVERSITY**

**SUBJECT**

Extension of multi-year contract for Athletic Director

**REFERENCE**

October 2011

The Idaho State Board of Education (Board) approved a 3-year contract for the Athletic Director, Jeffrey K. Tingey.

**APPLICABLE STATUTE, RULE, OR POLICY**

Idaho State Board of Education Governing Policies and Procedures, Section II.B.3.c., II.H. and V.U.

**BACKGROUND/DISCUSSION**

Idaho State University (ISU) is requesting approval to extend the contract agreement for Jeffrey K. Tingey, Director of Athletics (see Attachment 1). The term of the Employment Agreement is for a fixed-term commencing upon approval of the agreement by the Board, and terminating on June 30, 2017. The employment agreement contains the duties, responsibilities and conditions of employment. A model contract matrix of the employment agreement that identifies departures from the model contract form and provides justification for these changes is included as Attachment 3. The position is funded by state appropriated funds.

**IMPACT**

The annual salary for this position is \$120,931.20 per year plus supplemental compensation incentives as set forth below.

Academic Achievement

Academic incentive pay may be earned if Athletic Department average APR meets the following scores:

970-979	= \$1,500
980-989	= \$2,000
990-999	= \$2,500
1,000	= \$3,000

Athletic Incentive

Combined ticket sales for football, men's & women's basketball, women's soccer and volleyball is 10% higher than the immediate prior year = \$4,651.20

Annual payments for media appearances = \$15,000

**BUSINESS AFFAIRS AND HUMAN RESOURCES  
DECEMBER 18, 2014**

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Maximum potential annual compensation (base salary and maximum potential incentive) is \$143,582.40.

**ATTACHMENTS**

Attachment 1	Employment Agreement	Page 3
Attachment 2	Employment Agreement – Redline to Model	Page 17
Attachment 3	Model Contract Changes Matrix	Page 37
Attachment 4	4 Year APR scores	Page 39

**STAFF COMMENTS AND RECOMMENDATIONS**

In October 2011 the Board approved a three-year contract for the Director terminating on June 30, 2014. ISU is now requesting approval of a contract extension through June 30, 2017, which equates to a contract term of approximately 2½ years.

The base pay in the employment agreement reflects a 10% increase over the Director's current base salary. The university requests this increase in recognition of program success under the Director's leadership and in an effort to make his salary more competitive (compared to his conference counterparts) for retention purposes.

Additional non-cash benefits in this contract include:

- (1) a university-funded professional development opportunity for the Director; and
- (2) a country club membership.

*Note: Board policy provides that "membership at a country club shall be limited to institution senior management, shall be specifically provided for in an employment agreement and requires prior Board approval."*

Staff recommends approval.

**BOARD ACTION**

I move to approve the request by Idaho State University to extend a multi-year employment agreement with Jeffrey K. Tingey, Athletic Director, for a term commencing on December 19, 2014 and terminating on June 30, 2017, at a base salary of \$120,931.20 and supplemental compensation provisions, as submitted.

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

## EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between IDAHO STATE UNIVERSITY, and Jeffrey K. Tingey, (Athletic Director, hereafter "Director").

### ARTICLE 1

1.1. Employment. Subject to the terms and conditions of this Agreement, the University shall employ Director as the director of its intercollegiate athletics program (Program). Director represents and warrants that Director is fully qualified to serve, and is available for employment, in this capacity.

1.2. Reporting Relationship. Director shall report and be responsible directly to the University's President or the President's designee. Director shall abide by the reasonable instructions of the President or the President's designee and shall confer with the President or his/her designee on all administrative and technical matters. All references herein to the President shall be considered to include the President's designee.

1.3. Duties. Director shall manage and supervise the Program and shall perform such other duties in the University's athletic program as the President may assign and as may be described elsewhere in this Agreement. Independent of the University's right to reassign Director to other duties for cause as set forth elsewhere in this Agreement, the University shall have the right, at any time, to reassign Director to duties at the University other than as Director of the Program, provided that Director's compensation and benefits shall not be affected by any such reassignment, except to the extent described elsewhere in this Agreement.

### ARTICLE 2

2.1. Term. This Agreement is for a fixed-term commencing upon approval of this Agreement by the University's Board of Trustees and terminating, without further notice to Director, on June 30, 2017 unless sooner terminated in accordance with other provisions of this Agreement.

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

## ARTICLE 3

3.1 Regular Compensation.

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

- a) An annual salary of \$120,931.20 per year, payable in biweekly installments in accordance with normal University procedures, and such salary increases as may be determined appropriate by the President and approved by the University's Board of Trustees;
- b) The opportunity to receive such employee benefits as the University provides generally to non-faculty exempt employees.

3.2 Supplemental Compensation

3.2.1. Each year (July 1 through June 30) during the term of this Agreement, in which the Director achieves the following performance measures, he will be paid supplemental compensation as set forth below.

- a) The Director may qualify for supplemental pay if the departmental average NCAA Academic Progress Rate for that year meets the following scores:

<u>Department APR Score</u>	<u>Incentive pay</u>
970-979	\$1,500
980-989	\$2,000
990-999	\$2,500
1000	\$3,000

- b) If in any year during the term of this Agreement the combined unit ticket sales for football, women's basketball, men's basketball, women's volleyball, and women's soccer is ten percent (10%) higher than the immediately prior year, the Director will receive supplemental compensation equivalent to two weeks' annual regular compensation (1/26<sup>th</sup> of the amount set forth in Article 3.1.1(a)), said amount to be paid no later than sixty (60) days after the compensation is earned.

- c) **Supplemental Compensation.** The Director shall receive the sum of \$15,000 from the University or the University's designated media outlet(s) or a combination thereof each year during the term of this Agreement in compensation for participation in "Appearances"). Director's right to receive such payment shall vest on January 1 of each fiscal year of this Agreement and is expressly contingent on Director's compliance with University's policies and procedures. This sum shall be paid in two equal installments in January and July of each year. Agreements requiring the Director to participate in Appearances related to his duties as an employee of University are the property of the University. The University shall have the exclusive right to negotiate and contract with all producers of media productions and all parties desiring public appearances by the Director. Director agrees to cooperate with the University in order for the Appearances to be successful and agrees to provide his services to and perform on the Appearances and to cooperate in their production, broadcasting, and telecasting. It is understood that Director shall not appear without the prior written approval of the President on any radio or television program (including but not limited to a call-in show, or interview show) or a regularly scheduled news segment, through a media outlet that is not University-designated, except that this prohibition shall not apply to routine news media interviews for which no compensation is received. Without the prior written approval of the President, Director shall not appear in any commercial endorsements that are broadcast on radio or television that conflict with those broadcast on the University's designated media outlets.

3.2.2. Any supplemental compensation paid to the Director shall be accompanied with a detailed justification for the supplemental compensation based on the factors listed above, and such justification shall be separately reported to the Board of Trustees as a document available to the public under the Public Records Act. Further, eligibility for supplemental compensation set forth above shall also be contingent on the President's assessment of the Director's role in overseeing the conduct of the University's team members on the University campus, at authorized University activities, in the community, and elsewhere, and upon continuing overall improvement in the University's athletic programs.

- 3.3 **Professional Development Opportunity.** During the period of February 1 through August 1 of each year of this Agreement, University agrees to fund at least one mutually agreeable professional development opportunity for Director in the area of university advancement and fundraising.

- 3.4 Country Club Membership. Provided that funding for this purpose is made available to the University from outside sources, University agrees to purchase membership for the Director in Juniper Hills Country Club for his personal use and for the benefit of his advancement and fundraising activities.
- 3.5 General Conditions of Compensation. All compensation provided by the University to Director is subject to deductions and withholdings as required by law or the terms and conditions of any fringe benefit in which Director participates. However, if any fringe benefit is based in whole or in part upon the compensation provided by the University to Director, such fringe benefit shall be based only on the compensation provided pursuant to section 3.1.1, except to the extent required by the terms and conditions of a specific fringe benefit program.

#### **ARTICLE 4**

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

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

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

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

4.1.4. Know, recognize, and comply with all applicable laws and the policies, rules and regulations of the University, the University's governing board, the conference, and the NCAA; supervise and take appropriate steps to ensure that coaches and assistant coaches, and any other employees for whom Director is administratively responsible, and the members of any team in the Program know, recognize, and comply with all such laws, policies, rules and regulations; and immediately report to the President and to the Department's Director of Compliance if Director has reasonable cause to believe that any person or entity, including without limitation representatives of the University's athletic interests, has violated or is likely to violate any such laws, policies, rules or regulations. Director shall cooperate fully with the University and Department at all times. The names or titles of employees whom Director supervises are attached as Exhibit C. The applicable laws, policies, rules, and

regulations include: (a) State Board of Education Governing Policies and Procedures and Rule Manual; (b) University's Handbook; (c) University's Policies and Procedures; (d) the policies of the Department; (e) NCAA rules and regulations; and (f) the rules and regulations of the Big Sky Conference.

4.2 Outside Activities. Director shall not undertake any business, professional or personal activities, or pursuits that would prevent Director from devoting Director's full time and best efforts to the performance of Director's duties under this Agreement, that would otherwise detract from those duties in any manner, or that, in the opinion of the University, would reflect adversely upon the University or its athletic program.

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

4.4 Hiring Authority. Director shall have the responsibility and the sole authority to recommend to the President the hiring and termination of coaches and assistant coaches for all teams in the Program, but the decision to hire or terminate a coach or assistant coach shall be made by the Director (after recommendation by a head coach, in the case of assistant coaches), and shall, when necessary or appropriate, be subject to the approval of the President and the University's Board of Trustees.

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

## **ARTICLE 5**

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



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

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

other employees for whom Director is administratively responsible, or a member of any team of the Program, if Director knew or should have known of the violation and could have prevented it by ordinary supervision.

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

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

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

## **5.2 Termination of Director for Convenience of University.**

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

5.2.2 In the event that University terminates this Agreement for its own convenience, University shall be obligated to pay Director, as liquidated damages and not a penalty, the salary set forth in section 3.1.1(a), excluding all deductions required by law, on the regular paydays of University until the term of this Agreement ends; provided, however, in the event Director obtains other employment of any kind or nature after such termination, then the amount of compensation the University pays will be adjusted and reduced by the amount of compensation paid Director as a result of such other employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to Director under the other employment, then subtracting from this adjusted gross compensation deduction according to law. In addition, Director will be entitled to continue his health insurance plan and group life insurance as if he remained a University employee until the term of

this Agreement ends or until Director obtains employment or any other employment providing Director with a reasonably comparable health plan and group life insurance, whichever occurs first. Director shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law. Director specifically agrees to inform University within ten business days of obtaining other employment, and to advise University of all relevant terms of such employment, including without limitation the nature and location of employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise University shall constitute a material breach of this Agreement and University's obligation to pay compensation under this provision shall end. Director agrees not to accept employment for compensation at less than the fair value of Director's services, as determined by all circumstances existing at the time of employment. Director further agrees to repay to University all compensation paid to him by University after the date he obtains other employment, to which he is not entitled under this provision.

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

### 5.3 Termination by Director for Convenience.

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

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

5.3.3 If the Director terminates this Agreement for convenience at any time, all obligations of the University shall cease as of the effective date of the termination. If the Director terminates this Agreement for his convenience he shall pay to the University, as liquidated damages and not a penalty, one of the following sums: \$50,000.00 if terminated during the first year of the contract; \$40,000.00 if terminated

during the second year of the contract; and \$30,000.00 if terminated during the third year of the contract. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

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

5.3.5 Except as provide elsewhere in this Agreement, if Director terminates this Agreement for convenience, he shall forfeit to the extent permitted by law his right to receive all supplemental compensation and other payments.

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

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

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

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

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

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

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

ARTICLE 6

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

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

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

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

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

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

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

6.8 Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental

controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform (including financial inability), shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage.

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

6.10 Notices. Any notice under this Agreement shall be in writing and be delivered in person or by public or private courier service (including U.S. Postal Service Express Mail) or certified mail with return receipt requested or by facsimile. 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:

the University:                      President Arthur C. Vailas  
   921 S. 8<sup>th</sup> Ave.  
   Stop 8410  
   Pocatello, Idaho 83209

the Director:                        Jeffrey K. Tingey  
   Last known address on file with  
   University's Human Resource Services

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

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

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

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

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

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

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

IDAHO STATE UNIVERSITY

DIRECTOR

\_\_\_\_\_  
Arthur C. Vailas, President      Date

\_\_\_\_\_  
Jeffry K. Tingey      Date

Approved by the Board of Trustees on the \_\_\_\_ day of \_\_\_\_\_, 2014.



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~~(MODEL ATHLETICS CONTRACT)~~

## EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is entered into by and between IDAHO STATE UNIVERSITY, \_\_\_\_\_ (~~University (College)~~), and Jeffrey K. Tingey, (Athletic Director, hereafter "Director"). \_\_\_\_\_ (~~Coach~~).

## ARTICLE 1

1.1. Employment. Subject to the terms and conditions of this Agreement, the University (College) shall employ DirectorCoach as the directorhead coach of its intercollegiate athletics program (Program). ~~(Sport) team (Team) (or Director of Athletics).~~ Coach (Director) represents and warrants that DirectorCoach is fully qualified to serve, and is available for employment, in this capacity.

1.2. Reporting Relationship. DirectorCoach shall report and be responsible directly to the University's President University (College)'s Director or the President'sDirector's designee. DirectorCoach shall abide by the reasonable instructions of the President Director or the President'sDirector's designee and shall confer with the PresidentDirector or his/herthe Director's designee on all administrative and technical matters. All references herein to the PresidentCoach shall also be considered to includeunder the general supervision of the President's designee.University (College)'s Chief executive officer (Chief executive officer).

1.3. Duties. DirectorCoach shall manage and supervise the ProgramTeam and shall perform such other duties in the University'sUniversity (College)'s athletic program as the PresidentDirector may assign and as may be described elsewhere in this Agreement. Independent of the University's right to reassign Director to other duties for cause as set forth elsewhere in this Agreement, the University The University (College) shall have the right, at any time, to reassign DirectorCoach to duties at the University (College) other than as Directorhead coach of the ProgramTeam, provided that Director'sCoach's compensation and benefits shall not be affected by any such reassignment, except to the extent described elsewhere in this Agreement. that the opportunity to earn supplemental compensation as provided in sections 3.2.1 through (Depending on supplemental pay provisions used) shall cease.

## ARTICLE 2

2.1. Term. This Agreement is for a fixed-term appointment of \_\_\_\_\_ (\_\_\_\_) years, commencing upon approval of this Agreement by the University's Board of Trusteeson \_\_\_\_\_ and terminating, without further notice to DirectorCoach, on June 30, 2017 \_\_\_\_\_ unless sooner terminated in accordance with other provisions of this Agreement.

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

### ARTICLE 3

#### 3.1 Regular Compensation.

3.1.1 In consideration of ~~Director'sCoach's~~ services and satisfactory performance of this Agreement, the University ~~(College)~~ shall provide to ~~DirectorCoach~~:

- a) An annual salary of ~~\$120,931.20\$~~ \_\_\_\_\_ per year, payable in biweekly installments in accordance with normal University ~~(College)~~ procedures, and such salary increases as may be determined appropriate by the ~~PresidentDirector and Chief executive officer~~ and approved by the ~~University'sUniversity (College)'s~~ Board of ~~(Regents or Trustees)~~ \_\_\_\_\_;
- b) The opportunity to receive such employee benefits as the University ~~(College)~~ provides generally to non-faculty exempt employees; ~~and~~
- ~~c) The opportunity to receive such employee benefits as the University (College)'s Department of Athletics (Department) provides generally to its employees of a comparable level. Coach hereby agrees to abide by the terms and conditions, as now existing or hereafter amended, of such employee benefits.~~

#### 3.2 Supplemental Compensation

3.2.1. Each year (July 1 through June 30) during the term of this Agreement, in which the Director achieves the following performance measures, he will be paid supplemental compensation as set forth below.

- a) The Director may qualify for supplemental pay if the departmental average NCAA Academic Progress Rate for that year meets the following scores:

<u>Department APR Score</u>	<u>Incentive pay</u>
<u>970-979</u>	<u>\$1,500</u>
<u>980-989</u>	<u>\$2,000</u>
<u>990-999</u>	<u>\$2,500</u>
<u>1000</u>	<u>\$3,000</u>

b) If in any year during the term of this Agreement the combined unit ticket sales for football, women's basketball, men's basketball, women's volleyball, and women's soccer is ten percent (10%) higher than the immediately prior year, the Director will receive supplemental compensation equivalent to two weeks' annual regular compensation (1/26<sup>th</sup> of the amount set forth in Article 3.1.1(a)), said amount to be paid no later than sixty (60) days after the compensation is earned.

3.2.1- Supplemental Compensation. The Director~~Each year the Team is the conference champion or co-champion and also becomes eligible for a (bowl game pursuant to NCAA Division I guidelines or post-season tournament or post-season playoffs), and if Coach continues to be employed as University (College)'s head (Sport) coach as of the ensuing July 1st, the University (College) shall pay to Coach supplemental compensation in an amount equal to (amount or computation) of Coach's Annual Salary during the fiscal year in which the championship and (bowl or other post-season) eligibility are achieved. The University (College) shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.~~

3.2.2 Each year the Team is ranked in the top 25 in the (national rankings of sport's division), and if Coach continues to be employed as University (College)'s head (Sport) coach as of the ensuing July 1st, the University (College) shall pay Coach supplemental compensation in an amount equal to (amount or computation) of Coach's Annual Salary in effect on the date of the final poll. The University (College) shall determine the appropriate manner in which it shall pay Coach any such supplemental compensation.

3.2.3 Each year Coach shall be eligible to receive supplemental compensation in an amount up to (amount or computation) based on the academic achievement and behavior of Team members. The determination of whether Coach will receive such supplemental compensation and the timing of the payment(s) shall be at the discretion of the Chief executive officer in consultation with the Director. The determination shall be based on the following factors: the Academic Progress Rate set by the Board, grade point averages; difficulty of major course of study; honors such as scholarships, designation as Academic All-American, and conference academic

recognition; progress toward graduation for all athletes, but particularly those who entered the University (College) as academically at-risk students; the conduct of Team members on the University (College) campus, at authorized University (College) activities, in the community, and elsewhere. Any such supplemental compensation paid to Coach shall be accompanied with a detailed justification for the supplemental compensation based on the factors listed above and such justification shall be separately reported to the Board of (Regents or Trustees) as a document available to the public under the Idaho Public Records Act.

3.2.4 Each year Coach shall be eligible to receive supplemental compensation in an amount up to (amount or computation) based on the overall development of the intercollegiate (men's/women's) (Sport) program; ticket sales; fundraising; outreach by Coach to various constituency groups, including University (College) students, staff, faculty, alumni and boosters; and any other factors the Chief executive officer wishes to consider. The determination of whether Coach will receive such supplemental compensation and the timing of the payment(s) shall be at the discretion of the Chief executive officer in consultation with the Director.

c) 3.2.5 The Coach shall receive the sum of \$15,000 (amount or computation) from the University (College) or the University's University (College)'s designated media outlet(s) or a combination thereof each year during the term of this Agreement in compensation for participation in "Appearances". Director's media programs and public appearances (Programs). Coach's right to receive such a payment shall vest on January 1 the date of each fiscal year of this Agreement and is expressly contingent on Director's compliance with University's policies and procedures. the Team's last regular season or post-season competition, whichever occurs later. This sum shall be paid in two equal installments in January and July of each year (terms or conditions of payment). Agreements requiring the Director Coach to participate in Appearances Programs related to his duties as an employee of University (College) are the property of the University. (College). The University (College) shall have the exclusive right to negotiate and contract with all producers of media productions and all parties desiring public appearances by the Director. Director Coach. Coach agrees to cooperate with the University (College) in order for the Appearances Programs to be successful and agrees to provide his services to and perform on the Appearances Programs and to cooperate in their production, broadcasting, and telecasting. It is understood that Director neither Coach nor any assistant coaches shall not appear without the prior written approval of the President Director on any competing radio or television program (including but not limited to a coach's show, call-in show, or interview show) or a regularly scheduled news segment, through a media outlet that is not University-designated, except that

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

3.2.2. Any supplemental compensation paid to the Director shall be accompanied with a detailed justification for the supplemental compensation based on the factors listed above, and such justification shall be separately reported to the Board of Trustees as a document available to the public under the Public Records Act. Further, eligibility for supplemental compensation set forth above shall also be contingent on the President's assessment of the Director's role in overseeing the conduct of the University's team members on the University campus, at authorized University activities, in the community, and elsewhere, and upon continuing overall improvement in the University's athletic programs.

3.3 Professional Development Opportunity. During the period of February 1 through August 1 of each year of this Agreement, University agrees to fund at least one mutually agreeable professional development opportunity for Director in the area of university advancement and fundraising.

3.4 Country Club Membership. Provided that funding for this purpose is made available to the University from outside sources, University agrees to purchase membership for the Director in Juniper Hills Country Club for his personal use and for the benefit of his advancement and fundraising activities.

3.2.6 (SUMMER CAMP—OPERATED BY UNIVERSITY (COLLEGE))  
~~Coach agrees that the University (College) has the exclusive right to operate youth (Sport) camps on its campus using University (College) facilities. The University (College) shall allow Coach the opportunity to earn supplemental compensation by assisting with the University (College)'s camps in Coach's capacity as a University (College) employee. Coach hereby agrees to assist in the marketing, supervision, and general administration of the University (College)'s football camps. Coach also agrees that Coach will perform all obligations mutually agreed upon by the parties. In exchange for Coach's participation in the University (College)'s summer football camps, the University (College) shall pay Coach (amount) per year as supplemental compensation during each year of his employment as head (Sport) coach at the University (College). This amount shall be paid (terms of payment).~~

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

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



~~(College) against any claims, damages, or liabilities arising out of the operation of the summer youth camp(s)~~

- j) ~~All employees of the summer youth camp(s) shall be employees of the Coach or the private enterprise and not the University (College) while engaged in camp activities. The Coach and all other University (College) employees involved in the operation of the camp(s) shall be on annual leave status or leave without pay during the days the camp is in operation. The Coach or private enterprise shall provide workers' compensation insurance in accordance with Idaho law and comply in all respects with all federal and state wage and hour laws~~

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

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



3.5 ~~3.3~~ General Conditions of Compensation. All compensation provided by the University ~~(College)~~ to DirectorCoach is subject to deductions and withholdings as required by law or the terms and conditions of any fringe benefit in which DirectorCoach participates. However, if any fringe benefit is based in whole or in part upon the compensation provided by the University ~~(College)~~ to DirectorCoach, such fringe benefit shall be based only on the compensation provided pursuant to section 3.1.1, except to the extent required by the terms and conditions of a specific fringe benefit program.

#### ARTICLE 4

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

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

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

4.1.3. Require coaches, staff, and athletes to observe~~Observe~~ and uphold all academic standards, requirements, and policies of the University ~~(College)~~ and encourage Team members to perform to their highest academic potential and to graduate in a timely manner; and

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

Department; (e) NCAA ~~(or NAIA)~~ rules and regulations; and (f) the rules and regulations of the Big Sky Conference. ~~—(Sport)—conference of which the University (College) is a member.~~

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

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

4.4 Hiring Authority. DirectorCoach shall have the responsibility and the sole authority to recommend to the PresidentDirector the hiring and termination of coaches and assistant coaches for all teams in the ProgramTeam, but the decision to hire or terminate a coach or an assistant coach shall be made by the Director (after recommendation by a head coach, in the case of assistant coaches), and shall, when necessary or appropriate, be subject to the approval of the PresidentChief executive officer and the University'sUniversity (College)'s Board of ~~—(Trustees or Regents)—~~.

4.5 ~~Scheduling~~. ~~Coach shall consult with, and may make recommendations to, the Director or the Director's designee with respect to the scheduling of Team~~

~~competitions, but the final decision shall be made by the Director or the Director's designee.~~

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

## ARTICLE 5

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

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

- a) A deliberate or major violation of Director'sCoach's duties under this agreement or the refusal or unwillingness of DirectorCoach to perform such duties in good faith and to the best of Director'sCoach's abilities;
- b) The failure of DirectorCoach to remedy any violation of any of the terms of this agreement within 30 days after written notice from the University; (College);
- c) A deliberate or major violation by DirectorCoach of any applicable law or the policies, rules or regulations of the University, (College), the University'sUniversity (College)s governing board, the conference, or the NCAA, (NAIA), including but not limited to any such violation which may have occurred during the employment of DirectorCoach at another NCAA ~~or NAIA~~ member institution;
- d) Ten (10) working days' absence of DirectorCoach from duty without the University'sUniversity (College)s consent;
- e) Any conduct of DirectorCoach that constitutes moral turpitude or that would, in the University'sUniversity (College)s judgment, reflect adversely on the University (College) or its athletic programs;

- f) The failure of DirectorCoach to represent the University (College) and its athletic programs positively in public and private ~~forums~~;
- ~~g)~~ ~~g)~~ The failure of DirectorCoach to fully and promptly cooperate with the NCAA (NAIA) or the University (College) in any investigation of possible violations of any applicable law or the policies, rules or regulations of the University, ~~(College)~~, the University'sUniversity (College)s governing board, the conference, or the NCAA; ~~(NAIA)~~;
- ~~h)~~ ~~h)~~ The failure of DirectorCoach to report a known violation of any applicable law or the policies, rules or regulations of the University, ~~(College)~~, the University'sUniversity (College)s governing board, the conference, or the NCAA; ~~(NAIA)~~, by one of the coaches orCoach's assistant coaches, or any other employees for whom DirectorCoach is administratively responsible, or a member of any team of the ProgramTeam; or
- ~~i)~~ ~~i)~~ A violation of any applicable law or the policies, rules or regulations of the University, ~~(College)~~, the University'sUniversity (College)s governing board, the conference, or the NCAA; ~~(NAIA)~~, by one of the coaches orCoach's assistant coaches, any other employees for whom DirectorCoach is administratively responsible, or a member of any team of the ProgramTeam if DirectorCoach knew or should have known of the violation and could have prevented it by ordinary supervision.

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

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

5.1.4 If found in violation of NCAA (NAIA) regulations, DirectorCoach shall, in addition to the provisions of Section 5.1, be subject to disciplinary or corrective action as set forth in the provisions of the NCAA (NAIA) enforcement procedures. This

section applies to violations occurring at the University ~~(College)~~ or at previous institutions at which the ~~Director~~Coach was employed.

## 5.2 Termination of DirectorCoach for Convenience of University ~~.(College).~~

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

5.2.2 In the event that University ~~.(College)~~ terminates this Agreement for its own convenience, University ~~.(College)~~ shall be obligated to pay DirectorCoach, as liquidated damages and not a penalty, the salary set forth in section 3.1.1(a), excluding all deductions required by law, on the regular paydays of University ~~.(College)~~ until the term of this Agreement ends; ~~or until Coach obtains reasonably comparable employment, whichever occurs first,~~ provided, however, in the event DirectorCoach obtains other employment of any kind or nature after such termination, then the amount of compensation the University pays will be adjusted and reduced by the amount of compensation paid DirectorCoach as a result of such other employment, such adjusted compensation to be calculated for each University pay-period by reducing the gross salary set forth in section 3.1.1(a) (before deductions required by law) by the gross compensation paid to DirectorCoach under the other employment, then subtracting from this adjusted gross compensation ~~deduction~~deductions according to law. In addition, DirectorCoach will be entitled to continue his health insurance plan and group life insurance as if he remained a University ~~.(College)~~ employee until the term of this Agreement ends or until DirectorCoach obtains ~~reasonably comparable~~ employment or any other employment providing DirectorCoach with a reasonably comparable health plan and group life insurance, whichever occurs first. DirectorCoach shall be entitled to no other compensation or fringe benefits, except as otherwise provided herein or required by law. DirectorCoach specifically agrees to inform University within ten business days of obtaining other employment, and to advise University of all relevant terms of such employment, including without limitation the nature and location of employment, salary, other compensation, health insurance benefits, life insurance benefits, and other fringe benefits. Failure to so inform and advise University shall constitute a material breach of this Agreement and University's obligation to pay compensation under this provision shall end. DirectorCoach agrees not to accept employment for compensation at less than the fair value of Director'sCoach's services, as determined by all circumstances existing at the time of employment. DirectorCoach further agrees to repay to University all compensation paid to him by University after the date he obtains other employment, to which he is not entitled under this provision.

5.2.3 The parties have both been represented by, ~~or had the opportunity to consult with,~~ legal counsel in the contract negotiations and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the DirectorCoach may lose certain benefits, supplemental compensation, or outside compensation relating to his employment with University ~~.(College)~~, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by University ~~.(College)~~ and the acceptance thereof by DirectorCoach shall constitute adequate and reasonable compensation to DirectorCoach for the damages and injury suffered by DirectorCoach



because of such termination by University ~~.(College).~~ The liquidated damages are not, and shall not be construed to be, a penalty.

### 5.3 Termination by DirectorCoach for Convenience.

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

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

5.3.3 If the DirectorCoach terminates this Agreement for convenience at any time, all obligations of the University ~~(College)~~ shall cease as of the effective date of the termination. If the DirectorCoach terminates this Agreement for his convenience he shall pay to the University ~~.(College).~~ as liquidated damages and not a penalty, one of the following sums: \$50,000.00 if terminated during the first year of the contract; \$40,000.00 if terminated during the second year of the contract; and \$30,000.00 if terminated during the third year of the contract.sum: \_\_\_\_\_. The liquidated damages shall be due and payable within twenty (20) days of the effective date of the termination, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid.

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

5.3.5 Except as provideprovided elsewhere in this Agreement, if DirectorCoach terminates this Agreement for convenience, he shall forfeit to the extent

permitted by law his right to receive all supplemental compensation and other payments.

#### 5.4 Termination due to Disability or Death of [DirectorCoach](#).

5.4.1 Notwithstanding any other provision of this Agreement, this Agreement shall terminate automatically if [DirectorCoach](#) becomes totally or permanently disabled as defined by the [University'sUniversity \(College\)s](#) disability insurance carrier, becomes unable to perform the essential functions of the position of head [Directorecoach](#), or dies.

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

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

5.5 Interference by [DirectorCoach](#). In the event of termination, suspension, or reassignment, [DirectorCoach](#) agrees that [DirectorCoach](#) will not interfere with the [University'sUniversity \(College\)s](#) student-athletes or otherwise obstruct the [University'sUniversity \(College\)s](#) ability to transact business or operate its intercollegiate athletics program.

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

5.8 Waiver of Rights. Because the [DirectorCoach](#) is receiving a multi-year contract and the opportunity to receive supplemental compensation and because such contracts and opportunities are not customarily afforded to University [\(College\)](#) employees, if the University [\(College\)](#) suspends or reassigns [DirectorCoach](#), or



terminates this Agreement for good or adequate cause or for convenience, ~~Director~~Coach shall have all the rights provided for in this Agreement but hereby releases the University ~~(College)~~ from compliance with the notice, appeal, and similar employment-related rights provide for in the State Board of Education and Board or Regents of the University of Idaho Rule Manual (IDAPA 08) and Governing Policies and Procedures, ~~IDAPA 08.01.01 et seq., and the University (College) Faculty-Staff Handbook.~~

## ARTICLE 6

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

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

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

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

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

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

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

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

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

6.10 Notices. Any notice under this Agreement shall be in writing and be delivered in person or by public or private courier service (including U.S. Postal Service Express Mail) or certified mail with return receipt requested or by facsimile. 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:

the University: President Arthur C. Vailas  
921 S. 8<sup>th</sup> Ave.  
Stop 8410  
Pocatello, Idaho 83209

the (College): Director: Jeffrey K. Tingey of Athletics  
 \_\_\_\_\_  
 \_\_\_\_\_

with a copy to: Chief executive officer  
 \_\_\_\_\_  
 \_\_\_\_\_

the Coach: \_\_\_\_\_  
 Last known address on file with  
University'sUniversity (College)'s Human Resource Services

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

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

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

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

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

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

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

IDAHO STATE UNIVERSITY DIRECTOR(COLLEGE)  
COACH

Arthur C. Vailas, President, Chief executive officer Date Jeffry K.  
Tingey Date

Approved by the Board of (Regents or Trustees) on the \_\_\_\_ day of \_\_\_\_\_ ,  
20142010.

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<b>Jeff Tingey – Athletic Director - MULTI-YEAR CONTRACT – SUBSTANTIVE MODIFICATIONS FROM SBOE FORM (AS ADPATED FROM MODEL COACH FORM)</b>			
	<b>MODEL CONTRACT SECTION</b>	<b>ISU CONTRACT SECTION</b>	<b>JUSTIFICATION FOR MODIFICATION</b>
1	1.2	1.2	Reporting Relationship altered to show reporting to President
2	1.3	1.3	Duties altered to be applicable to Athletic Director
3	3.1(c)		Deleted as inapplicable to A.D.
4	3.2.1	3.2.1	Supplemental compensation provisions altered to be appropriate to A.D. position
5	3.2	3.2.1 a)	Supplemental Compensation for APR scores tied to athletic department average one-year scores to provide a reasonably achievable incentive
6	3.2	3.2.1 b)	Tied bonuses to Combined Ticket Sales to meet objective of University to increase attendance at games
7	3.3	3.3	Added Professional Development Opportunity as beneficial to both parties
8		3.4	Added Country Club Membership provided that funding is provided by booster club
9	4.2	4.2	Outside activities provision altered to remove inapplicable provisions
10			
11			
12			

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## IDAHO STATE UNIVERSITY

All Sports APR History and National Percentile Rank

## SINGLE YEAR NCAA ACADEMIC PROGRESS RATE (APR) SCORES

	2009-10	2010-11	2011-12	2012-13
All Sports	939	950	983	973
<i>National % Rank by Sport</i>	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>

## REPORT YEAR

Raw Score for single year

*Percentile Rank for Sport*

## MULTI-YEAR (4-Year Rolling Average)

All Sports	934	937	950	963
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**BUSINESS AFFAIRS AND HUMAN RESOURCES  
DECEMBER 18, 2014**

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<b>TAB</b>	<b>DESCRIPTION</b>	<b>ACTION</b>
<b>1</b>	<b>AMENDMENT TO BOARD POLICY</b> Section V.R. – Establishment of Fees – Second Reading	Motion to approve
<b>2</b>	<b>BOISE STATE UNIVERSITY</b> License Agreement with Elsevier	Motion to approve
<b>3</b>	<b>UNIVERSITY of IDAHO</b> 2015 Bond Refunding	Motion to approve
<b>4</b>	<b>FY 2015 IDAHO OPPORTUNITY SCHOLARSHIP</b>	Motion to approve

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

Board Policy V.R. – Establishment of Fees – second reading

**REFERENCE**

June 2014	Idaho State Board of Education (Board) approved first reading of Policy V.R.
October 2014	A number of material changes were made, so Policy V.R. was brought forward for first reading again and was approved by the Board.

**APPLICABLE STATUTE, RULE, OR POLICY**

Idaho State Board of Education Governing Policies & Procedures, Section V.R.

**BACKGROUND/DISCUSSION**

Highlights of the proposed clarifications and revisions to the special course fee policy are as follows:

- Special course fees are in addition to the standard per credit hour fee.
- Special course fees must be directly related to academic programming or, in the case of professional-technical courses, the skill or trade being taught.
- Special course fees may only be charged to cover the direct costs of the additional and necessary expenses unique to the course.
- Special course fees may not be used to subsidize other courses, programs or institution operations.
- Special course fees shall be separately accounted for, and institutions shall ensure appropriate use and reserve balances.
- Special course fees shall be formally reviewed by the institution as part of a rolling 3-year cycle.

Processing fees, permits and fines were moved out of the special course fee policy into a separate paragraph. The scope and intent of these charges is clarified.

A new “online program fee” is added to the policy. Defining characteristics of this fee are as follows:

- The online program fee may be charged for any fully online undergraduate, graduate or certificate program.
- The fee is in lieu of resident or non-resident tuition and all other Board-approved fees.
- The fee may be priced at a market competitive rate.

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At the request of Idaho State University (ISU) a new Summer Bridge Program fee was added. The proposed fee would set a discounted per credit hour fee for high school graduates who are admitted to participate into a summer bridge program of pre-define courses immediately following graduation and who will matriculate at the same institution in the fall semester. The intent of the program is to assist incoming students with knowledge and skills to be successful in college.

**IMPACT**

The proposed policy amendments should provide more transparency to students of the all-in cost of their education. The proposed Online Program fee will enable the institutions to begin offering competitively priced programs in the online market.

**ATTACHMENTS**

Attachment 1 – Section V.R. – Second Reading

Page 5

**STAFF COMMENTS AND RECOMMENDATIONS**

There are three proposed changes that were made between first and second reading:

1. Online Program Fee: Based on input from the institutions, staff removed the requirement that an online program fee must be “an all-inclusive fee.” The concern about such a requirement is that since online program fees would be Board-approved, all-in pricing could constrain institutions’ ability to address unique or variable costs which could be handled with special course fees (on top of the online program fee). Since the stated intent of the online program fee is to enable the institutions to engage in market competitive pricing, it will be in their own best interest to limit additive fees to the Board-approved sticker price.
2. Current policy authorizing a fee for continuing education courses limits application of the fee to part-time students. The institutions have indicated the notion that all continuing education students are part-time is anachronistic. Further, this limitation is no longer consistent with the “Continuing Education” section of policy (III.L.) which was updated by the Board at the December 2013 Board meeting.

Staff recommends approval of the 2<sup>nd</sup> reading inclusive of the aforementioned changes.

**BOARD ACTION**

I move to approve the second reading of proposed amendments to Board policy Section V.R., Establishment of Fees, as presented.

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

**Idaho State Board of Education  
GOVERNING POLICIES AND PROCEDURES**

**SECTION: V. FINANCIAL AFFAIRS**

**Subsection: R. Establishment of Fees**

[March 2013](#)[December 2014](#)

**1. Board Policy on Student Tuition and Fees**

Consistent with the Statewide Plan for Higher Education in Idaho, the institutions shall maintain tuition and fees that provide for quality education and maintain access to educational programs for Idaho citizens. In setting fees, the Board will consider recommended fees as compared to fees at peer institutions, percent fee increases compared to inflationary factors, fees as a percent of per capita income and/or household income, and the share students pay of their education costs. Other criteria may be considered as is deemed appropriate at the time of a fee change. An institution cannot request more than a ten percent (10%) increase in the total full-time student fee unless otherwise authorized by the Board.

**2. Tuition and Fee Setting Process – Board Approved Tuition and Fees**

**a. Initial Notice**

A proposal to alter student tuition and fees covered by Subsection V.R.3. shall be formalized by initial notice of the chief executive officer of the institution at least six (6) weeks prior to the Board meeting at which a final decision is to be made.

Notice will consist of transmittal, in writing, to the student body president and to the recognized student newspaper during the months of publication of the proposal contained in the initial notice. The proposal will describe the amount of change, statement of purpose, and the amount of revenues to be collected.

The initial notice must include an invitation to the students to present oral or written testimony at the public hearing held by the institution to discuss the fee proposal. A record of the public hearing as well as a copy of the initial notice shall be made available to the Board.

**b. Board Approval**

Board approval for fees will be considered when appropriate or necessary. This approval will be timed to provide the institutions with sufficient time to prepare the subsequent fiscal year operating budget.

**c. Effective Date**

Any change in the rate of tuition and fees becomes effective on the date approved by the Board unless otherwise specified.

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3. Definitions and Types of Tuition and Fees

The following definitions are applicable to tuition and fees charged to students at all of the state colleges and universities under the governance of the Board, except where limited to a particular institution or institutions (the community colleges are included only as specified).

a. General and Professional-Technical Education Tuition and Fees

Tuition and fees approved by the State Board of Education. Revenues from these fees are deposited in the unrestricted ~~current~~ fund ~~0650~~.

i. Tuition ~~fees~~ – University of Idaho, Boise State University, Idaho State University, Lewis-Clark State College

Tuition ~~fees are the fees~~ is the amount charged for any and all educational costs at University of Idaho, Boise State University, Idaho State University, and Lewis Clark State College. Tuition ~~fees~~ includes, but ~~are~~ is not limited to, costs associated with academic services; instruction; the construction, maintenance, and operation of buildings and facilities; student services; or institutional support.

ii. Professional-Technical Education Fee

Professional-Technical Education fee is defined as the fee charged for educational costs for students enrolled in Professional-Technical Education pre-employment, preparatory programs.

iii. Part-time Credit Hour Fee

Part-time credit hour fee is defined as the fee per credit hour charged for educational costs for part-time students enrolled in any degree program.

iv. Graduate Fee

Graduate fee is defined as the additional fee charged for educational costs for full-time and part-time students enrolled in any post- baccalaureate degree-granting program.

v. Western Undergraduate Exchange (WUE) Fee

Western Undergraduate Exchange fee is defined as the additional fee for full-time students participating in this program and shall be equal to fifty percent (50%) of the total of ~~the~~ tuition ~~fee~~, facility fee, technology fee and activity fee.

vi. Employee/Spouse/Dependent Fee

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The fee for eligible participants shall be set by each institution, subject to Board approval. Eligibility shall be determined by each institution. Employees, spouses and dependents at institutions and agencies under the jurisdiction of the Board may be eligible for this fee. Employees of the Office of the State Board of Education and the Division of Professional-Technical Education shall be treated as institution employees for purposes of eligibility. Special course fees may also be charged.

vii. Senior Citizen Fee

The fee for eligible participants shall be set by each institution, subject to Board approval. Eligibility shall be determined by each institution.

viii. In-Service Teacher Education Fee

The fee shall not exceed one-third of the average part-time undergraduate credit hour fee or one-third of the average graduate credit hour fee. This special fee shall be applicable only to approved teacher education courses. The following guidelines will determine if a course or individual qualifies for this special fee.

- a) The student must be an Idaho certified teacher or other professional employed at an Idaho elementary or secondary school.
- b) The costs of instruction are paid by an entity other than an institution.
- c) The course must be approved by the appropriate academic unit(s) at the institution.
- d) The credit awarded is for professional development and cannot be applied towards a degree program.

ix. Workforce Training Credit Transcription Fee

A fee may be charged for processing and transcribing credits. The fee shall be \$10.00 per credit for academic year 2014-15 only, and set annually by the Board thereafter. This fee is defined as a fee may be charged to students enrolled in a qualified Workforce Training course where the student elects to receive credit. The fee is charged for processing and transcribing the credit. The cost of delivering Workforce Training courses, which typically are for noncredit, is an additional fee since Workforce Training courses are self-supporting. The fees for delivering the courses are retained by the technical colleges. The Workforce Training fee shall be \$10.00 per credit. This fee may also be charged for transcribing demonstrable technical competencies.

x. Online Program Fee



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a) An online program fee is defined as a fee charged for any fully online undergraduate, graduate, and certificate programs. An online program fee shall be ~~an all-inclusive fee~~ in lieu of resident or non-resident tuition (as defined in Idaho Code §33-3717B) and all other Board-approved ~~or local~~ fees.

b) Nothing in this policy shall preclude pricing online programs at a market competitive rate which may be less or more than the current resident or non-resident per credit hour rates.

b. Institutional Local Fees – Approved by the Board

Institutional local fees are ~~both full-time and part-time~~ student fees that are approved by the State Board of Education and deposited into local institutional accounts. Local fees shall be expended for the purposes for which they were collected.

The facilities, activity and technology fees shall be displayed with the institution's tuition and fees when the Board approves tuition and fees.

i. Facilities Fee

Facilities fee is defined as the fee charged for capital improvement and building projects and for debt service required by these projects. Revenues collected from this fee may not be expended on the operating costs of the general education facilities.

ii. Activity Fee

Activity fee is defined as the fee charged for such activities as intercollegiate athletics, student health center, student union operations, the associated student body, financial aid, intramural and recreation, and other activities which directly benefit and involve students. The activity fee shall not be charged for educational costs or major capital improvement or building projects. Each institution shall develop a detailed definition and allocation proposal for each activity for internal management purposes.

iii. Technology Fee

Technology fee is defined as the fee charged for campus technology enhancements and operations directly related to services for student use and benefit (e.g., internet and web access, general computer facilities, electronic or online testing, and online media).

iv. Professional Fees

To designate a professional fee for a Board approved academic program, *all* of the following criteria must be met:

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- a) Credential or Licensure Requirement:
- 1) A professional fee may be ~~assessed~~charged for an academic professional program if graduates of the program obtain a specialized higher education degree that qualifies them to practice a professional service involving expert and specialized knowledge for which credentialing or licensing is required. For purposes of this fee, “academic” means a systematic, usually sequential, grouping of courses that provide the student with the knowledge and competencies required for a baccalaureate, master’s, specialist or doctoral degree as defined in policy III.E.1.
  - 2) The program leads to a degree where the degree is at least the minimum required for entry to the practice of a profession.
- b) Accreditation Requirement: The program:
- 1) is accredited,
  - 2) is actively seeking accreditation if a new program, or
  - 3) will be actively seeking accreditation after the first full year of existence if a new program by a regional or specialized accrediting agency.
- c) Extraordinary Program Costs: Institutions will propose professional fees for Board approval based on the costs to deliver the program. An institution must provide clear and convincing documentation that the cost of the professional program significantly exceeds the cost to deliver non-professional programs at the institution. A reduction in appropriated funding in support of an existing program is not a sufficient basis alone upon which to make a claim of extraordinary program costs.
- d) The program may include support from appropriated funds.
- e) The program is consistent with traditional academic offerings of the institution serving a population that accesses the same activities, services, and features as regular full-time, tuition-paying students.
- f) Upon the approval and establishment of a professional fee, course fees associated with the same program shall be prohibited.
- g) Once a professional fee is initially approved by the Board, any subsequent increase in a professional fee shall require prior approval by the Board at the same meeting institutions submit proposals for tuition and fees.
- v. Self-Support Academic Program Fees
- a) Self-support programs are academic degrees or certificates for which students are charged program fees, in lieu of tuition. For purposes of this fee, “academic” means a systematic, usually sequential, grouping of courses that provide the student with the knowledge and competencies required for an academic certificate, baccalaureate, master’s, specialist or

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**DECEMBER 18, 2014**

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doctoral degree. To bring a Self-support program fee to the Board for approval, the following criteria must be met:

- 1) An institution shall follow the program approval guidelines set forth in policy III.G.
  - 2) The Self-support program shall be a defined set of specific courses that once successfully completed result in the awarding of an academic certificate or degree.
  - 3) The Self-support program shall be distinct from the traditional offerings of the institution by serving a population that does not access the same activities, services and features as full-time, tuition paying students, such as programs designed specifically for working professionals, programs offered off-campus, or programs delivered completely online.
  - 4) No appropriated funds may be used in support of Self-support programs. Self-support program fee revenue shall cover all direct costs of the program. In addition, Self-support program fee revenue shall cover all indirect costs of the program within two years of program start-up.
  - 5) Self-support program fees shall be segregated, tracked and accounted for separately from all other programs of the institution.
- b) If a Self-support program fee is requested for a new program, an institution may fund program start-up costs with appropriated or local funds, but all such funding shall be repaid to the institution from program revenue within a period not to exceed three years from program start-up.
- c) Once a Self-support program fee is initially approved by the Board, any subsequent increase in a Self-support program fee shall require prior approval by the Board.
- d) Institutions shall [audit-review](#) Self-support academic programs every three (3) years to ensure that program revenue is paying for all program costs, direct and indirect, and that no appropriated funds are supporting the program.
- e) Students enrolled in self-support programs may take courses outside of the program so long as they pay the required tuition and fees for those courses.

vi. Contracts and Grants

Special fee arrangements are authorized by the Board for instructional programs provided by an institution pursuant to a grant or contract approved by the Board.

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vii. Student Health Insurance Premiums or Room and Board Rates

Fees for student health insurance premiums paid either as part of the uniform student fee or separately by individual students, or charges for room and board at the dormitories or family housing units of the institutions. Changes in insurance premiums or room and board rates or family housing charges shall be approved by the Board no later than three (3) months prior to the semester the change is to become effective. The Board may delegate the approval of these premiums and rates to the chief executive officer.

viii. New Student Orientation Fee

This fee is defined as a mandatory fee charged to all first-time, full-time students who are registered and enrolled at an institution. The fee may only be used for costs of on-campus orientation programs such as materials, housing, food and student leader stipends, not otherwise covered in Board-approved tuition and fees.

ix. Dual Credit Fee

High school students who enroll in one or more dual credit courses delivered by high schools (including Idaho Digital Learning Academy), either face-to-face or online, are eligible to pay a reduced cost per credit which is approved at the Board's annual tuition and fee setting meeting. The term "dual credit" as used in this section is defined in Board Policy III.Y.

x. Summer Bridge Program Fee

This fee is defined as a fee charged to students recently graduated from high school, who are admitted into a summer bridge program at an institution the summer immediately following graduation ~~from high school~~, and who will be enrolling in pre-determined college-level courses at the same institution the fall semester of the same year for the express purpose of ~~helping-incoming students~~ acquiring knowledge and skills necessary to be successful in college. The bridge program fee shall be \$65 per credit for academic year 2014-15 only, and set annually by the Board thereafter.

c. Institutional Local Fees and Charges Approved by Chief Executive Officer

~~These~~The following local fees and charges are assessed charged to support specific activities and are only charged to students that engage in these particular activities. Local fees and charges are deposited into local institutional accounts or the unrestricted ~~current~~ fund ~~0650~~ and shall only be expended for the purposes for which they were collected. All local fees or changes to such local fees are established and become effective in the amount and at the time specified by the chief executive officer or provost of the institution. The chief executive officer is responsible for reporting these local fees to the Board upon request.

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i. Continuing Education

Continuing education fee is defined as the additional fee to ~~part-time continuing education~~ students which is charged on a per credit hour basis to support the costs of continuing education.

ii. Course Overload Fee

This fee may be charged to full-time students with excessive course loads as determined by each institution. Revenue from this fee is deposited in the unrestricted ~~current~~ fund ~~0650~~.

iii. Special Course Fees ~~or Assessments~~

~~A special course fee is a fee required for a specific course or special activity and, therefore, not required of all students enrolled at the institution. Fees such as: student orientation fees (when assessed to only those who register to participate), penalty assessments, library fines, continuing education fees, parking fines, laboratory fees, breakage fees, fees for video outreach courses, late registration fees, and fees for special courses offered for such purposes as remedial education credit that do not count toward meeting degree requirements are considered special course fees. All special course fees or penalty assessments, or changes to such fees or assessments, are established and become effective in the amount and at the time specified by the chief executive officer or provost of the institution. The chief executive officer is responsible for reporting these fees to the Board upon request.~~

A special course fee is an additive fee on top of the standard per credit hour fee which may be charged to students enrolled in a specific course for materials and/or activities required for that course. Special course fees, or changes to such fees, are established and become effective in the amount and at the time specified by the chief executive officer or provost, and must be prominently posted so as to be readily accessible and transparent to students, along with other required course cost information. These fees shall be reported to the Board upon request.

a) Special course fees shall be directly related to academic programming. Likewise, special course fees for professional-technical courses shall be directly related to the skill or trade being taught.

b) Special course fees may only be charged to cover the direct costs of the additional and necessary expenses that are unique to the course. This includes the costs for lab materials and supplies, specialized software, cost for distance and/or online delivery, and personnel costs for a lab manager. A special course fee shall not subsidize other courses, programs or institution operations.

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- c) A special course fee shall not be used to pay a cost for which the institution would ordinarily budget including faculty, administrative support and supplies.
- d) Special course fees shall be separately accounted for and shall not be commingled with other funds; provided however, multiple course fees supporting a common special cost (e.g. language lab, science lab equipment, computer equipment/software, etc.) may be combined. The institution is responsible for managing these fees to ensure appropriate use (i.e. directly attributable to the associated courses) and that reserve balances are justified to ensure that fees charged are not excessive.
- e) The institution shall maintain a system of procedures and controls providing reasonable assurance that special course fees are properly approved and used in accordance with this policy, including an annual rolling review of one-third of the fees over a 3-year cycle.

iv. Processing Fees, Permits and Fines

- a) Processing fees may be charged for the provision of academic products or services to students (e.g. undergraduate application fee, graduate application fee, program application fee, graduation/diploma fee, and transcripts). Fees for permits (e.g. parking permit) may also be charged.
- b) Fines may be charged for the infraction of an institution policy (e.g., late fee, late drop, library fine, parking fine, lost card, returned check, or stop payment).

All processing fees, permit fees and fines are established and become effective in the amount and at the time specified by the chief executive officer, and shall be reported to the Board upon request.

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**DECEMBER 18, 2014**

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**BOISE STATE UNIVERSITY**

**SUBJECT**

License agreement with Elsevier B.V.

**REFERENCE**

February 2012                      Idaho State Board of Education (Board) approved  
Elsevier agreement

**APPLICABLE STATUTE, RULE, OR POLICY**

Idaho State Board of Education Governing Policies & Procedures, Section  
V.I.3.a.

**BACKGROUND/DISCUSSION**

Boise State University (BSU) requests permission to enter into a license agreement with Elsevier B.V. (Elsevier). The proposed agreement will provide unlimited simultaneous and remote desktop access to approximately 2,000 journal titles for students, faculty, staff, researchers, and independent contractors of BSU as well as for visitors using computer terminals in Albertsons Library.

Elsevier's extensive and unique full-text journal collection covers authoritative titles from core scientific literature, including high-impact factor titles. Access to the collection is critical for academic programs and research on campus including biology, engineering, health science, nursing, geophysics, mathematics, biomolecular and biomedical science, chemistry, and musculoskeletal research.

Access to the journals is crucial to the continued growth of active research programs and increased research productivity by BSU students and faculty members. Without access to these journals, students and faculty would be placed at a distinct disadvantage regionally and nationally.

This is a single-subscriber license due to strict licensing rules imposed by the publishers. Elsevier is the sole publisher and distributor of the electronic journals offered in this package, and on the ScienceDirect platform.

The total amount of the three year agreement is \$1,267,212.45 and will be paid in yearly installments. At the end of the three year term, BSU has the option to renew for a fourth year at the current applicable licensing fees in place at the time of renewal, estimated to be \$463,331.27. Accordingly, BSU requests permission to exercise the renewal option at the end of year three for a total contract amount not to exceed \$1.75 million.



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**IMPACT**

Year 1 (January 1 - December 31, 2015)	\$401,970.64
Year 2 (January 1 - December 31, 2016)	\$422,069.17
Year 3 (January 1 - December 31, 2017)	\$443,172.64
Optional one year renewal (January 1 – December 31, 2018)	<u>\$465,331.27</u> (est)
	\$1,732,543.72

Source of funding is appropriated funds.

**ATTACHMENTS**

Attachment 1 – Elsevier Subscription Agreement	Page 3
Attachment 2 – Boise State University PO# 650403	Page 5

**STAFF COMMENTS AND RECOMMENDATIONS**

BSU's library dean advised staff that "University of Idaho and Idaho State University libraries have contracts with Elsevier. University of Idaho recently renewed their contract for 5 years. ISU's current contract expires at the end of December 2014. The library directors/deans have discussed a combined Elsevier contract numerous times in the past, most recently this last summer (2014). A combined contract among the 3 institutions would be more expensive for all three institutions."

Staff recommends approval.

**BOARD ACTION**

I move to authorize Boise State University to enter into a three year license agreement, with an optional one year renewal, for an amount not to exceed \$1.75 million, with Elsevier as outlined herein.

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

## Purchase Order

## Boise State University

BSU Purchasing  
1910 University Drive  
Boise ID 83725-1210  
United States

Vendor: 0000030900  
Elsevier BV  
Radarweg 29  
1043 NX Amsterdam  
Netherlands

Dispatch via Print

Purchase Order	Date	Revision	Page
IDBSU-0000650403	10/27/2014		1
PO Reference			
Payment Terms	Freight Terms	Ship Via	
Net 30	Destination	Best Way	
Buyer	Phone	Currency	
Farris, Lori	208/426-5449	USD	

Ship To: BSU Central Receiving  
1453 University Drive  
Boise ID 83706  
United States

Bill To: BSU Accounts Payable  
1910 University Drive  
Boise ID 83725-1248  
United States

Tax Exempt? Y Tax Exempt ID: 000012415-S

Line-Sch	Item/Description	Quantity	UOM	PO Price	Extended Amt	Due Date
1- 1	Elsevier ScienceDirect e-journal subscription to include the Complete Freedom Collection and Cell Press Collection	1.00	LOT	401,970.640	401,970.64	01/01/2015

Item Total 401,970.64

ATTN: Chris Schneider, c.schneider@elsevier.com

Pricing, specifications, and terms are per the attached, revised Subscription Agreement

Term of agreement: January 1, 2015 - December 31, 2017 (PO is for 1st year - 2015)

Total PO Amount 401,970.64

All shipments, shipping papers, invoices, and correspondence must be identified with our Purchase Order Number. Overshipments will not be accepted unless authorized by Buyer prior to shipment.

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**ELSEVIER SUBSCRIPTION AGREEMENT**

This agreement (“Agreement”) is entered into as of 10 September 2014 by and between **Boise State University**, 1910 University Drive, Boise, ID 83725, USA (the “Subscriber”), and **Elsevier B.V.**, Radarweg 29, 1043 NX Amsterdam, The Netherlands (“Elsevier”).

The parties hereto agree as follows:

**SECTION 1. SUBSCRIPTION.****1.1 Subscribed Products.**

Elsevier hereby grants to the Subscriber the non-exclusive, non-transferable right to access and use the products and services identified in Schedule 1 (“Subscribed Products”) and provide the Subscribed Products to its Authorized Users (as defined herein) subject to the terms and conditions of this Agreement.

**1.2 Authorized Users/Sites.**

Authorized Users are the full-time and part-time students, faculty, staff and researchers of the Subscriber and individuals who are independent contractors or are employed by independent contractors of the Subscriber affiliated with the Subscriber’s locations listed on Schedule 2 (the “Sites”) and individuals using computer terminals within the library facilities at the Sites permitted by the Subscriber to access the Subscribed Products for purposes of personal research, education or other non-corporate use (“Walk-in Users”).

**1.3 Authorized Uses.**

Each Authorized User may:

- access, search, browse and view the Subscribed Products;
- print, download and store a reasonable portion of individual items from the Subscribed Products for the exclusive use of such Authorized User;
- incorporate links to the Subscribed Products on the Subscriber’s intranet and internet websites and in electronic coursepacks, reserves and course management systems and instructor websites, provided that the appearance of such links and/or statements accompanying such links will be changed as reasonably requested by Elsevier;
- provide print or electronic copies of individual items from the Subscribed Products to other Authorized Users and to third-party colleagues for their scholarly or research use;
- store individual journal articles from the Subscribed Products in the private library of a social networking site for the Authorized User’s own personal use only;
- share individual journal articles from the Subscribed Products with third party colleagues individually for their scholarly or research use;
- share individual journal articles from the Subscribed Products with a limited number of third party colleagues as part of an invitation only working group on a social networking site for personal, scholarly or research use that works with publishers to provide anonymized usage information; and
- access, search, browse, view, print, make electronic copies and store for the exclusive use of such Authorized User or, if the Authorized User is a librarian/information specialist, for the

exclusive use of another Authorized User certain journal articles and book chapters from the ScienceDirect® online service that are not subscribed to as part of the Subscribed Products, with each twenty-four (24) hour access period for a selected article or chapter, a “Transaction”.

The Subscriber may:

- deliver journal articles from Subscribed Titles (as defined herein) and, if any, book chapters from the Subscribed Products to fulfill requests as part of the practice commonly known as “interlibrary loan” from non-commercial libraries located within the United States, provided that the Subscriber’s staff reviews the requests and fulfills the requests in compliance with Section 108 of the U.S. Copyright Law (17 U.S.C. § 108) and the Guidelines for the Proviso of Subsection 108(g)(2) (Final Report of the National Commission on New Technological Uses of Copyrighted Works, 1978);
- access the text and data mining service online via an API at <http://www.developers.elsevier.com> to continuously and automatically extract and index and/or process information from the Subscribed Products to which the Subscriber separately subscribes and load and integrate the results (the “TDM Output”) on the Subscriber’s text-mining system for access and use by Authorized Users; and
- distribute the TDM Output externally, which may include a few lines of query-dependent text of individual full text articles or book chapters which will be up to a maximum length of 200 characters surrounding and excluding the text entity matched (“Snippets”) or bibliographic metadata. Where Snippets and/or bibliographic metadata are distributed, they should be accompanied by a DOI link that points back to the individual full text article or book chapter. Where images are used the Subscriber should clear the rights for reuse with the relevant copyright owner and/or rights holder. Further the TDM Output should include a Creative Commons proprietary notice in the following form:

*“© Some rights reserved. This work permits non-commercial use, distribution, and reproduction in any medium, provided the original author and source are credited.”*

Text and data mining services online may be accessed by vendors or other third parties retained by the Subscriber only with the express written permission of Elsevier and for the index and/or process information purposes of the Subscriber.

#### 1.4 *Restrictions on Use of Subscribed Products.*

Except as expressly stated in this Agreement or otherwise permitted in writing by Elsevier, the Subscriber and its Authorized Users may not:

- abridge, modify, translate or create any derivative work based on the Subscribed Products, except to the extent necessary to make them perceptible on a computer screen to Authorized Users;
- remove, obscure or modify in any way any copyright notices, other notices or disclaimers as they appear in the Subscribed Products;
- use any robots, spiders, crawlers or other automated downloading programs, algorithms or devices to continuously and automatically search, scrape, extract, deep link, index or disrupt the working of the Subscribed Products;
- substantially or systematically reproduce, retain or redistribute the Subscribed Products; or

- post individual items from the Subscribed Products on social networking sites.

Authorized Users who are individuals who are independent contractors or are employed by independent contractors may use the Subscribed Products only for the purposes of the contracted research work for the Subscriber.

### 1.5 *Intellectual Property Ownership.*

The Subscriber acknowledges that all right, title and interest in and to the Subscribed Products remain with Elsevier and its suppliers, except as expressly set forth in this Agreement, and that the unauthorized redistribution of the Subscribed Products could materially and irreparably harm Elsevier and its suppliers.

Notwithstanding anything to the contrary contained in this Agreement, more extensive usage terms might be permitted for open access content in the Subscribed Products as identified in the individual journal article as stated in the applicable user (e.g. CC) license.

## SECTION 2. ELSEVIER PERFORMANCE OBLIGATIONS.

### 2.1 *Access to Subscribed Products.*

Elsevier will make the Subscribed Products accessible to the Subscriber and its Authorized Users from the internet address set forth on Schedule 1 or as may be otherwise set forth herein.

### 2.2 *Quality of Service.*

Elsevier will use reasonable efforts to provide the Subscribed Products with a quality of service consistent with industry standards, specifically, to provide continuous service with an average of 98% up-time per year, with the 2% down-time including scheduled maintenance and repairs performed at a time to minimize inconvenience to the Subscriber and its Authorized Users, and to restore service as soon as possible in the event of an interruption or suspension of service.

### 2.3 *Withdrawal of Content.*

Elsevier reserves the right to withdraw from the Subscribed Products content that it no longer retains the right to provide or that it has reasonable grounds to believe is unlawful, harmful, false or infringing.

### 2.4 *Usage Data Reports.*

Elsevier will make usage data reports on the Subscriber's usage activity accessible online on a monthly basis to the librarians/administrators employed by the Subscriber for internal use only. Such reports may be accessed by vendors or other third parties retained by the Subscriber only with the express written permission of Elsevier and for the purpose of usage analysis of the Subscriber.

## SECTION 3. SUBSCRIBER PERFORMANCE OBLIGATIONS.

### 3.1 *Authentication.*

Access to the Subscribed Products will be authenticated by the use of Internet Protocol ("IP") address(es) and/or usernames and passwords and/or a delegated authentication mechanism requiring at least two different credentials, as identified on Schedule 2. Distribution of usernames, passwords, credentials or otherwise providing remote access to the Subscribed Products by Authorized Users who are Walk-in Users is not permitted.

### 3.2 *Protection from Unauthorized Access and Use.*

The Subscriber will use reasonable efforts to:

- limit access to and use of the Subscribed Products to Authorized Users and notify all Authorized Users of the usage restrictions set forth in this Agreement and that they must comply with such restrictions;

- issue any passwords or credentials used to access the Subscribed Products only to Authorized Users, not divulge any passwords or credentials to any third party, and notify all Authorized Users not to divulge any passwords or credentials to any third party; and
- promptly upon becoming aware of any unauthorized use of the Subscribed Products, inform Elsevier and take appropriate steps to end such activity and to prevent any recurrence.

In the event of any unauthorized use of the Subscribed Products, Elsevier may suspend the access and/or require that the Subscriber suspend the access from where the unauthorized use occurred upon notice to the Subscriber. The Subscriber will not be liable for unauthorized use of the Subscribed Products by any Authorized Users provided that the unauthorized use did not result from the Subscriber's own negligence or willful misconduct and that the Subscriber did not permit such unauthorized use to continue after having actual notice thereof.

#### **SECTION 4. FEES AND PAYMENT TERMS.**

The Subscriber will pay to Elsevier the fees set forth in Schedule 1 (the "Fees") within thirty (30) days of date of invoice for the Fees due for first year of the term and, thereafter, no later than 15 December for the Fees due for the following year of the term. Late payments will be subject to interest charges of 1% per month on the unpaid balance. The Fees will be exclusive of any sales, use, value added, withholding or similar tax and the Subscriber will be liable for any such taxes in addition to the Fees.

#### **SECTION 5. TERM.**

##### *5.1 Term.*

The term of this Agreement will commence on 01 January 2015 and continue until 31 December 2017.

##### *5.2 Renewal.*

This Agreement may be renewed upon mutual agreement of the parties in writing for an additional one-year term, and the Fees will be increased by the then current standard Elsevier price increase.

#### **SECTION 6. ELSEVIER WARRANTIES AND INDEMNITIES.**

##### *6.1 Warranties.*

Elsevier warrants that use of the Subscribed Products in accordance with the terms and conditions herein will not infringe the intellectual property rights of any third party.

##### *6.2 Indemnities.*

Elsevier will indemnify, defend and hold harmless the Subscriber and its Authorized Users from and against any loss, damage, costs, liability and expenses (including reasonable attorneys' fees) arising from or out of any third-party action or claim that use of the Subscribed Products in accordance with the terms and conditions herein infringes the intellectual property rights of such third party. If any such action or claim is made, the Subscriber will promptly notify and reasonably cooperate with Elsevier. This indemnity obligation will survive the termination of this Agreement.

##### *6.3 Disclaimer.*

EXCEPT FOR THE EXPRESS WARRANTIES AND INDEMNITIES STATED HEREIN AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE SUBSCRIBED PRODUCTS ARE PROVIDED "AS IS" AND ELSEVIER AND ITS SUPPLIERS EXPRESSLY DISCLAIM ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND WITH REGARD TO THE SUBSCRIBED PRODUCTS AND ANY OTHER DATA, DOCUMENTATION OR MATERIALS PROVIDED IN CONNECTION WITH THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ERRORS, INACCURACIES, OMISSIONS, OR DEFECTS CONTAINED THEREIN, AND

ANY IMPLIED OR EXPRESS WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

#### 6.4 *Limitation of Liability.*

Except for the express warranties and indemnities stated herein and to the extent permitted by applicable law, in no event will Elsevier or its suppliers be liable for any indirect, incidental, special, consequential or punitive damages including, but not limited to, loss of data, business interruption or loss of profits, arising out of or in connection with this Agreement, or will the liability of Elsevier and its suppliers to the Subscriber exceed a sum equal to the Fees paid by the Subscriber hereunder during the twelve (12) month period immediately preceding the date on which the claim arose, even if Elsevier or any supplier has been advised of the possibility of such liability or damages.

### SECTION 7. GENERAL.

#### 7.1 *Force Majeure.*

Neither party's delay or failure to perform any provision of this Agreement as a result of circumstances beyond its control (including, but not limited to, war, strikes, fires, floods, power failures, telecommunications or Internet failures or damage to or destruction of any network facilities or servers) will be deemed a breach of this Agreement.

#### 7.2 *Severability.*

The invalidity or unenforceability of any provision of this Agreement will not affect any other provisions of this Agreement.

#### 7.3 *Entire Agreement.*

This Agreement contains the entire understanding and agreement of the parties and replaces and supersedes any and all prior and contemporaneous agreements, communications, proposals and purchase orders, written or oral, between the parties with respect to the subject matter contained herein.

#### 7.4 *Modification.*

No modification, amendment or waiver of any provision of this Agreement will be valid unless in writing and signed by the parties.

#### 7.5 *Assignment.*

The Subscriber will not assign, transfer or license any of its rights or obligations under this Agreement unless it obtains the prior written consent of Elsevier, which consent will not unreasonably be withheld.

#### 7.6 *Privacy.*

Elsevier will not, without the prior written consent of the Subscriber, transfer any personal information of any Authorized Users to any non-affiliated third party or use it for any purpose other than as described in this Agreement and in the online privacy policy for the relevant online service.

#### 7.7 *Notices.*

All notices given pursuant to this Agreement will be in writing and delivered to the party to whom such notice is directed at the address specified below or the electronic mail address as such party will have designated by notice hereunder.

If to Elsevier: Elsevier B.V. c/o Regional Sales Office, Elsevier Inc., 360 Park Avenue South, New York, NY 10010-1710, USA.

If to the Subscriber: Boise State University, 1910 University Drive, Boise, ID 83725, USA.

#### 7.8 *Confidentiality.*

The Subscriber and its employees, officers, directors and agents will maintain as confidential and not disclose to any non-affiliated third party without Elsevier's prior written consent or except as required by



law the financial terms and commercial conditions of this Agreement.

7.9 *Execution.*

This Agreement and any amendment thereto may be executed in counterparts, and signatures exchanged by facsimile or other electronic means are effective to the same extent as original signatures. The rights and obligations contemplated herein shall not inure to either party unless and until approval of this Agreement is sought and received from the Idaho State Board of Education. The Subscriber shall use its reasonable efforts to obtain such approval at the next available meeting of the Idaho State Board of Education.

**IN WITNESS WHEREOF**, the parties have executed this Agreement by their respective, duly authorized representatives as of the date first above written.

**BOISE STATE UNIVERSITY**  
**(Subscriber)**

\_\_\_\_\_  
Name:  
Title:

**ELSEVIER B.V.**  
**(Elsevier)**

\_\_\_\_\_  
Name: Martin O'Malley  
Title: Managing Director Research Solutions Sales

No. 1-7065110323

## ELSEVIER SUBSCRIPTION AGREEMENT

## Schedule 1

## Subscribed Products/Access/Fees

## BOISE STATE UNIVERSITY

No. 1-7065110323

Subscribed Products – publisher	Access	2015 USD	2016 USD	2017 USD
ScienceDirect® online – Elsevier B.V.	sciencedirect.com		5%	5%
Complete Freedom Collection				
• <i>Total Electronic Subscription</i>		\$269,831.51	\$283,323.09	\$297,489.24
• <i>Total Subscription Turnover</i>		\$269,831.51	\$283,323.09	\$297,489.24
• Electronic Subscription Fee (10% discounted)		\$242,848.47	\$254,990.89	\$267,740.44
• Content Fee 10 %		\$26,983.14	\$28,332.30	\$29,748.91
• Complete Freedom Collection Fee		\$127,020.40	\$133,371.42	\$140,040.00
Cell Press Collection Fee		\$5,118.63	\$5,374.56	\$5,643.29
<b>TOTAL FEES</b>		<b>\$401,970.64</b>	<b>\$422,069.17</b>	<b>\$443,172.64</b>

**Adjustment of Fees**

After the initial year of the term, the Fees for the Subscriber's Journal Collection(s) will be subject to an adjustment to account for any titles removed from the Journal Collection(s) during the remainder of the term of this Agreement.

**Journal Collection(s)**

The Subscriber's Journal Collection(s) is described in Schedule 1.1.

**Transaction Fee**

The Subscriber may purchase pre-paid Transactions ("PPT") upon mutual agreement of the parties in writing. Unused PPT will be forfeited one (1) year after issue or upon termination of this Agreement, whichever is earlier.

**ELSEVIER SUBSCRIPTION AGREEMENT****Schedule 1.1****Journal Subscription****Journal Collection(s):**

**Complete Freedom Collection:** Electronic access to the full text of all articles from the Elsevier journal titles published since 1 January 1995 set forth in the Complete Freedom Collection Journal Title List at <http://www.info.sciencedirect.com/content/journals/titles>, as may be updated annually with the changes effective as of 1 January of the following calendar year of the term of the Agreement.

**Cell Press Collection:** Electronic access to the full text of all articles from the Cell Press journal titles published since 1 January 1995 identified on Annex A to Schedule 1.1.

**Option to Substitute Subscribed Titles**

The Subscriber may substitute any of the subscribed journal titles identified on Annex A to Schedule 1.1 ("Subscribed Titles") with one or more journal titles of total comparable value (in current year list price) once annually upon notice to Elsevier by 1 August prior to the start of the next calendar year or at any time upon mutual agreement of the parties in writing. The foregoing does not apply to the Cell Press Collection.

**Option to Substitute or Refund Withdrawn Subscribed Titles**

The Subscriber may substitute any withdrawn Subscribed Title with one or more journal titles of total comparable value (in current year list price) at any time upon notice to Elsevier. In the event that no substitute journal title is available, Elsevier will refund to the Subscriber the amount of the Fees paid for the withdrawn Subscribed Titles for the remainder of the term.

**Transferred Titles**

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**Annex A to Schedule 1.1  
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13351	1076-6332	Academic Radiology
00486	0361-3682	Accounting, Organizations and Society
00221	1359-6454	Acta Materialia
13279	0065-3101	Advances in Pediatrics
02001	0309-1708	Advances in Water Resources
01001	1359-1789	Aggression and Violent Behavior
05320	0168-1923	Agricultural and Forest Meteorology
13246	0002-9378	American Journal of Obstetrics & Gynecology
07689	0749-3797	American Journal of Preventive Medicine
04263	1472-0299	Anaesthesia & Intensive Care Medicine
12602	0003-3472	Animal Behaviour
00768	0883-2927	Applied Geochemistry
13310	0003-9993	Archives of Physical Medicine and Rehabilitation
06071	1872-9312	Artery Research
13049	0749-8063	Arthroscopy: the Journal of Arthroscopy and Related Surgery
04101	1036-7314	Australian Critical Care
14032	0001-2092	AORN Journal
12671	1521-6942	Best Practice & Research: Clinical Rheumatology
05002	0005-2728	Biochimica et Biophysica Acta - Bioenergetics
13342	1083-8791	Biology of Blood and Marrow Transplantation
13074	1043-321X	Breast Diseases: A Year Book Quarterly
05323	0341-8162	Catena
05324	0009-2541	Chemical Geology
00362	0045-6535	Chemosphere
13344	1542-3565	Clinical Gastroenterology and Hepatology
12821	0009-9260	Clinical Radiology
05364	0167-9473	Computational Statistics & Data Analysis
07452	8755-4615	Computers and Composition
00398	0098-3004	Computers & Geosciences
00260	0010-938X	Corrosion Science
13077	0363-0188	Current Problems in Diagnostic Radiology
12674	1043-4666	Cytokine
00216	FS00-0216	Deep-Sea Research Part I: Oceanographic Research Papers with Part II: Topical Studies in Oceanography (Combined Subscription)
00116	0967-0645	Deep-Sea Research Part II: Topical Studies in Oceanography
00489	0967-0637	Deep-Sea Research Part I: Oceanographic Research Papers
10004	1125-7865	Dendrochronologia
07453	0885-2006	Early Childhood Research Quarterly
05328	0012-821X	Earth and Planetary Science Letters
05329	0012-8252	Earth-Science Reviews
08019	0720-048X	European Journal of Radiology

Product ID	ISSN	Subscribed Title (online only)
13364	1550-8307	Explore: the Journal of Science & Healing
07647	0015-0282	Fertility and Sterility
05106	0378-1127	Forest Ecology and Management
07531	0891-5849	Free Radical Biology & Medicine
13216	0016-5085	Gastroenterology
12033	0016-6480	General and Comparative Endocrinology
09110	0016-6995	Geobios
00212	0016-7037	Geochimica et Cosmochimica Acta
05334	0169-555X	Geomorphology
05335	0921-8181	Global and Planetary Change
13360	1547-5271	Heart Rhythm
12046	0018-506X	Hormones and Behavior
07551	0360-3016	International Journal of Radiation Oncology / Biology / Physics
00256	1365-1609	International Journal of Rock Mechanics and Mining Sciences
13340	2212-2672	Journal of the Academy of Nutrition and Dietetics
13450	0890-8567	Journal of the American Academy of Child & Adolescent Psychiatry
13357	1546-1440	Journal of the American College of Radiology
07682	1072-7515	Journal of the American College of Surgeons
13242	0894-7317	Journal of the American Society of Echocardiography
13424	1933-1711	Journal of the American Society of Hypertension
10174	0737-4607	Journal of Accounting Literature
12050	0278-4165	Journal of Anthropological Archaeology
12643	0305-4403	Journal of Archaeological Science
00235	1367-9120	Journal of Asian Earth Sciences
04289	1672-6529	Journal of Bionic Engineering
13427	1934-5925	Journal of Cardiovascular Computed Tomography
14031	1094-6950	Journal of Clinical Densitometry
05342	0169-7722	Journal of Contaminant Hydrology
00366	0047-2352	Journal of Criminal Justice
06013	0304-4076	Journal of Econometrics
13165	0099-1767	Journal of Emergency Nursing
14027	0099-2399	Journal of Endodontics
12064	0095-0696	Journal of Environmental Economics and Management
13136	0363-5023	Journal of Hand Surgery (American Volume)
14016	0894-1130	Journal of Hand Therapy
04103	1001-6058	Journal of Hydrodynamics, Ser.B
05344	0022-1694	Journal of Hydrology
07816	1094-9968	Journal of Interactive Marketing
13431	1939-8654	Journal of Medical Imaging and Radiation Sciences
05204	0022-3093	Journal of Non-Crystalline Solids
13410	1499-4046	Journal of Nutrition Education and Behavior
05400	0272-6963	Journal of Operations Management
13068	0278-2391	Journal of Oral and Maxillofacial Surgery
13189	8755-7223	Journal of Professional Nursing
00699	0022-4405	Journal of School Psychology
04244	1440-2440	Journal of Science and Medicine in Sport
13085	1058-2746	Journal of Shoulder and Elbow Surgery
00839	0895-9811	Journal of South American Earth Sciences
05401	0378-3758	Journal of Statistical Planning and Inference

Product ID	ISSN	Subscribed Title (online only)
00539	0191-8141	Journal of Structural Geology
07553	0740-5472	Journal of Substance Abuse Treatment
13088	0022-5223	Journal of Thoracic and Cardiovascular Surgery
13089	0741-5214	Journal of Vascular Surgery
05347	0377-0273	Journal of Volcanology and Geothermal Research
07432	1090-9516	Journal of World Business
07694	0886-3350	Journal Of Cataract & Refractive Surgery
05350	0025-3227	Marine Geology
05351	0377-8398	Marine Micropaleontology
07539	0958-3947	Medical Dosimetry
02094	0026-2692	Microelectronics Journal
00274	0026-2714	Microelectronics Reliability
06068	1574-7891	Molecular Oncology
13175	0029-6554	Nursing Outlook
07585	0161-6420	Ophthalmology: Journal of the American Academy of Ophthalmology
07753	0090-2616	Organizational Dynamics
05355	0031-0182	Palaeogeography, Palaeoclimatology, Palaeoecology
06065	1871-174X	Palaeoworld
04285	1002-0160	Pedosphere
05224	0167-2789	Physica D: Nonlinear Phenomena
12108	0033-5894	Quaternary Research
00636	0277-3791	Quaternary Science Reviews
12697	1078-8174	Radiography
00222	1359-6462	Scripta Materialia
13318	1053-4296	Seminars in Radiation Oncology
13108	0037-198X	Seminars in Roentgenology
13129	0887-2171	Seminars in Ultrasound, Ct and Mri
06034	0925-4005	Sensors and Actuators B: Chemical
00103	0038-1101	Solid-State Electronics
05422	0167-7152	Statistics & Probability Letters
13367	1550-7289	Surgery for Obesity and Related Diseases
00224	0742-051X	Teaching and Teacher Education
05361	0040-1951	Tectonophysics
07586	0002-9149	The American Journal of Cardiology
07610	0003-4975	The Annals of Thoracic Surgery
07418	0099-1333	The Journal of Academic Librarianship
07583	1053-2498	The Journal of Heart and Lung Transplantation
13372	1553-4650	The Journal of Minimally Invasive Gynecology
13249	0022-3476	The Journal of Pediatrics
14024	0022-5347	The Journal of Urology
02286	0099-5355	The Lancet (North American Edition)
07443	0362-3319	The Social Science Journal
05319	0166-8641	Topology and its Applications
02122	0169-5347	Trends in Ecology & Evolution
07554	0301-5629	Ultrasound in Medicine and Biology

Product ID	ISSN	Cell Press Collection Journal Title
13437	0006-3495	Biophysical Journal
07590	0092-8674	Cell
07591	1074-7613	Immunity

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**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**DECEMBER 18, 2014**

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**UNIVERSITY OF IDAHO**

**SUBJECT**

Authorization for issuance of tax-exempt refunding and general revenue bonds to refund certain outstanding bonds.

**REFERENCE**

January 2005                      Idaho State Board of Education (Board) approved Series 2005A Bonds

**APPLICABLE STATUTE, RULE, OR POLICY**

Idaho State Board of Education Governing Policies & Procedures, Section V.F.; Sections 33-3804 and 57-504, Idaho Code.

**BACKGROUND/DISCUSSION**

**Overview of proposed bonds**

The University of Idaho (UI), with the assistance of its financial advisor and its bond underwriter, has reviewed outstanding bond issues to assess when it is advisable to refinance bonds to take advantage of savings that may be available due to lower interest rates. This review indicates significant savings can be had through refinancing UI's outstanding General Revenue Refunding Bonds, Series 2005A (the "Series 2005A Bonds").

The UI will issue the Series 2015A Bonds to: (i) finance, together with other available funds, the refunding of the University's outstanding Series 2005A Bonds and (ii) pay costs of issuance associated with the Series 2015A Bonds in the total principal amount not to exceed \$22,285,000.

**2015 Supplemental Resolution**

The 2015A Supplemental Resolution (Attachment 4) authorizes issuance of the Series 2015 Bonds for the purposes outlined above.

**Rate, Maturities, Security and Ratings**

- Interest rates will be determined at pricing; however the bond market is currently in a very favorable position for these issuances.
- The 2015A Bonds will bear fixed interest rates to maturity; final maturity date not to exceed April 1, 2026. This is also the final maturity for the original Series 2005A Bonds.
- The 2015A Bonds will be issued as part of the General Revenue Bond System and secured by pledged revenues to include student fees, sales and service revenues from auxiliary enterprises and educational activities, revenues received for facility and administrative cost recovery in conjunction with grants and contracts, various miscellaneous revenues, and certain investment income.

**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**DECEMBER 18, 2014**

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- Redemption terms for the 2015A Bonds will be determined at the time of pricing.
- Moody's Investors Service and Standard & Poor's each have affirmed UI's ratings of "Aa3" and "A+" respectively with stable outlook.

**IMPACT**

The UI now has the opportunity to lock in today's low rates. The current interest rate market (as of November 10, 2014) suggests UI could acquire an effective true interest cost (TIC) of approximately 2.34%. Based on this same interest rate effective date, the net present value of the projected savings from the refunding is \$1.9 million.

The UI's ten year debt projections (Attachment 1) show the projected debt service needs and the projected debt service sources with respect to the proposed bonds.

**ATTACHMENTS**

Attachment 1 – Ten Year Debt Projection	Page 5
Attachment 2 – Ten Year Debt Projection Series 2015A Breakout	Page 6
Attachment 3 – Preliminary Official Statement (Draft)	Page 7
Attachment 4 – Supplemental Resolution	Page 73
Attachment 5 – Bond Purchase Agreement (Draft)	Page 103
Attachment 6 – Continuing Disclosure Agreement 2015A (Draft)	Page 119
Attachment 7 – Opinions of Bond Counsel (Draft)	Page 129
Attachment 8 – Rating Agency Reports	Page 137
Attachment 9 – Escrow Agreement (Draft)	Page 155

**STAFF COMMENTS AND RECOMMENDATIONS**

UI requests approval to refinance bonds issued in 2005. Refinancing will not extend the maturity date of the original issuance (April 1, 2016) and will result in \$1.9M in debt service avoidance.

Board policy V.F. establishes a limit for overall debt using a debt burden ratio which measures an institution's dependence on debt as a fund source for financing its operations and the relative cost of debt to an institution's total expenditures. The limit for this ratio (actual debt service over annual adjusted expenses) is to be no greater than 8.0%. With this issuance UI's debt service would drop from 4.06% in FY15 to 3.60% in FY16. Even after the previously approved 2014 issuance<sup>1</sup> hits the books in FY17, the ratio reaches a high of 3.86% and then decreases thereafter.

Staff recommends approval.

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<sup>1</sup> Series 2014 bonds will finance the construction of the Integrated Research and Innovation Center and the renovation of the College of Education building.

**BUSINESS AFFAIRS AND HUMAN RESOURCES  
DECEMBER 18, 2014**

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**BOARD ACTION**

I move to approve the request by the University of Idaho for a Supplemental Resolution for issuance of the Series 2015A bonds, the title of which is as follows:

A SUPPLEMENTAL RESOLUTION of the Regents of the University of Idaho authorizing the issuance and sale of General Revenue Refunding Bonds, Series 2015A, in the principal amount of up to \$22,285,000 (the "Series 2015A Bonds"), authorizing the execution and delivery of a Bond Purchase Agreement, Escrow Agreement, Continuing Disclosure Agreement, Preliminary Official Statement, Final Official Statement and other documents, and providing for other matters relating to the authorization, issuance, sale and payment of the Series 2015A Bonds.

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

**(Roll Call Vote Required)**

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THE REGENTS OF THE UNIVERSITY OF IDAHO  
General Revenue Refunding Bonds  
Series 2015A

ATTACHMENT 1  
True Interest Cost of 2.34%

University of Idaho  
10 Year Debt Projection  
November 12, 2014

	Cost	Est Debt Financed	Terms	FY2015 Est	FY2016 Est	FY2017 Est	FY2018 Est	FY2019 Est	FY2020 Est	FY2021 Est	FY2022 Est	FY2023 Est	FY2024 Est	FY2025 Est
				Current Yr 4/1/2015	Year 1 4/1/2016	Year 2 4/1/2017	Year 3 4/1/2018	Year 4 4/1/2019	Year 5 4/1/2020	Year 6 4/1/2021	Year 7 4/1/2022	Year 8 4/1/2023	Year 9 4/1/2024	Year 10 4/1/2025
1 Potential Projects														
2 Research / Classroom Building - 80k SF - FY 2017	\$24,000,000	\$12,000,000	(Note 1)	\$ -	\$ -	\$ 781,000	\$ 781,000	\$ 781,000	\$ 781,000	\$ 781,000	\$ 781,000	\$ 781,000	\$ 781,000	\$ 781,000
3 Projected New Debt Financing	\$24,000,000	\$12,000,000		\$ -	\$ -	\$ 781,000	\$ 781,000	\$ 781,000	\$ 781,000	\$ 781,000	\$ 781,000	\$ 781,000	\$ 781,000	\$ 781,000
4 Beginning Facilities Fee Reserve				\$ 2,800,000	\$ 2,783,386	\$ 4,700,535	\$ 4,864,639	\$ 5,069,340	\$ 5,238,699	\$ 6,227,123	\$ 7,254,367	\$ 9,126,199	\$ 10,892,435	\$ 12,571,471
5 Operating Transfers for Debt Service				7,841,334	8,283,890	7,801,290	7,826,290	7,826,290	7,806,190	7,831,190	7,831,190	7,831,190	7,737,190	7,760,078
6 Student Facility Fee (SFF) Revenue				7,200,000	7,200,000	7,200,000	7,200,000	7,200,000	7,200,000	7,200,000	7,200,000	7,200,000	7,200,000	7,200,000
7 U.S. Subsidy Payment for Series 2010C Build America Bonds				276,147	275,998	275,998	275,998	275,998	275,998	275,998	275,998	275,998	275,998	275,998
9 Available for Debt Service Payments				\$ 18,117,481	\$ 18,543,274	\$ 19,977,823	\$ 20,166,927	\$ 20,371,628	\$ 20,520,887	\$ 21,534,311	\$ 22,561,555	\$ 24,433,386	\$ 26,105,623	\$ 27,807,548
10 Existing Debt Service				\$ 15,334,095	\$ 13,036,074	\$ 11,559,034	\$ 11,545,987	\$ 11,580,679	\$ 11,259,914	\$ 11,252,294	\$ 10,406,507	\$ 11,198,902	\$ 11,194,502	\$ 11,186,072
11 Series 2015 Bonds				-	806,665	2,773,150	2,770,600	2,771,250	2,252,850	2,246,650	2,247,850	1,561,050	1,558,650	1,554,250
12 New Projected Debt Service (FY17-FY25)				-	-	781,000	781,000	781,000	781,000	781,000	781,000	781,000	781,000	781,000
13 Total Projected Debt Service				\$ 15,334,095	\$ 13,842,739	\$ 15,113,184	\$ 15,097,587	\$ 15,132,929	\$ 14,293,764	\$ 14,279,944	\$ 13,435,357	\$ 13,540,952	\$ 13,534,152	\$ 13,521,322
14 Net Annual Change - Revenue Resources Less Projected Debt Service				\$ 2,783,386	\$ 4,700,535	\$ 4,864,639	\$ 5,069,340	\$ 5,238,699	\$ 6,227,123	\$ 7,254,367	\$ 9,126,199	\$ 10,892,435	\$ 12,571,471	\$ 14,286,226
15 Operating Budget				\$377,235,786	\$384,796,364	\$391,999,982	\$399,483,740	\$407,116,626	\$414,881,254	\$422,780,604	\$430,466,750	\$438,708,893	\$447,097,772	\$455,648,134
16 Debt Service as % of Operating Budget				4.06%	3.60%	3.86%	3.78%	3.72%	3.45%	3.38%	3.12%	3.09%	3.03%	2.97%

Notes and Assumptions:

1. For Projected New Debt Financing, the projections assume \$12 million is financed for 30 years at 5.0% interest rate following a mortgage style amortization.
2. Assumes no growth in the Student Facility Fee.
3. Annual operating budget assumes 2.00% growth through 2025.
4. Operating budget does not include student loans, but does include gross bond interest prior to impact of U.S. subsidy payment on Build America Bonds.
5. Student enrollment remains level throughout projections.
6. U.S. Subsidy payments are reduced by 7.25% in FY 2015 and 7.3% through FY 2025, which reflects the current federal sequestration payment reduction.
7. For FY2015, existing debt service includes the University's cash payment for principal and interest on April 1, 2015 associated with the Series 2005A Bonds. This amount is being contributed to the escrow account for the Series 2015A Bonds.

\*\* For detailed UI input refer to Dan Stephens draft file

**THE REGENTS OF THE UNIVERSITY OF IDAHO**  
**General Revenue Refunding Bonds**  
**Series 2015A**

**ATTACHMENT 2**  
**True Interest Cost of 2.34%**

**SUMMARY DEBT SERVICE REQUIREMENTS**

Fiscal Year	Outstanding Bonds						Series 2015			Total		
	Principal	Interest	Total P+I	US Subsidy	Net Interest	Net Annual Debt Service	Principal	Interest	Debt Service	Principal	Net Interest	Net Annual Debt Service
4/1/2015	6,195,000.00	9,139,095.25	15,334,095.25	(276,146.80)	8,862,948.45	15,057,948.45	-	-	-	6,195,000.00	8,862,948.45	15,057,948.45
4/1/2016	4,505,000.00	8,531,074.00	13,036,074.00	(275,997.92)	8,255,076.08	12,760,076.08	-	806,664.72	806,664.72	4,505,000.00	9,061,740.80	13,566,740.80
4/1/2017	3,215,000.00	8,344,034.00	11,559,034.00	(275,997.92)	8,068,036.08	11,283,036.08	2,085,000.00	688,150.00	2,773,150.00	5,300,000.00	8,756,186.08	14,056,186.08
4/1/2018	3,315,000.00	8,230,986.50	11,545,986.50	(275,997.92)	7,954,988.58	11,269,988.58	2,145,000.00	625,600.00	2,770,600.00	5,460,000.00	8,580,588.58	14,040,588.58
4/1/2019	3,465,000.00	8,115,679.00	11,580,679.00	(275,997.92)	7,839,681.08	11,304,681.08	2,210,000.00	561,250.00	2,771,250.00	5,675,000.00	8,400,931.08	14,075,931.08
4/1/2020	3,260,000.00	7,999,914.00	11,259,914.00	(275,997.92)	7,723,916.08	10,983,916.08	1,780,000.00	472,850.00	2,252,850.00	5,040,000.00	8,196,766.08	13,236,766.08
4/1/2021	3,410,000.00	7,842,294.00	11,252,294.00	(275,997.92)	7,566,296.08	10,976,296.08	1,845,000.00	401,650.00	2,246,650.00	5,255,000.00	7,967,946.08	13,222,946.08
4/1/2022	3,095,000.00	7,311,506.50	10,406,506.50	(275,997.92)	7,035,508.58	10,130,508.58	1,920,000.00	327,850.00	2,247,850.00	5,015,000.00	7,363,358.58	12,378,358.58
4/1/2023	4,025,000.00	7,173,901.50	11,198,901.50	(275,997.92)	6,897,903.58	10,922,903.58	1,310,000.00	251,050.00	1,561,050.00	5,335,000.00	7,148,953.58	12,483,953.58
4/1/2024	4,205,000.00	6,989,501.50	11,194,501.50	(275,997.92)	6,713,503.58	10,918,503.58	1,360,000.00	198,650.00	1,558,650.00	5,565,000.00	6,912,153.58	12,477,153.58
4/1/2025	4,390,000.00	6,796,071.50	11,186,071.50	(275,997.92)	6,520,073.58	10,910,073.58	1,410,000.00	144,250.00	1,554,250.00	5,800,000.00	6,664,323.58	12,464,323.58
4/1/2026	4,600,000.00	6,593,376.50	11,193,376.50	(275,997.92)	6,317,378.58	10,917,378.58	1,475,000.00	73,750.00	1,548,750.00	6,075,000.00	6,391,128.58	12,466,128.58
4/1/2027	6,275,000.00	6,380,326.50	12,655,326.50	(275,997.92)	6,104,328.58	12,379,328.58	-	-	-	6,275,000.00	6,104,328.58	12,379,328.58
4/1/2028	6,560,000.00	6,090,924.00	12,650,924.00	(275,997.92)	5,814,926.08	12,374,926.08	-	-	-	6,560,000.00	5,814,926.08	12,374,926.08
4/1/2029	6,860,000.00	5,787,749.00	12,647,749.00	(275,997.92)	5,511,751.08	12,371,751.08	-	-	-	6,860,000.00	5,511,751.08	12,371,751.08
4/1/2030	7,175,000.00	5,475,320.26	12,650,320.26	(275,997.92)	5,199,322.34	12,374,322.34	-	-	-	7,175,000.00	5,199,322.34	12,374,322.34
4/1/2031	7,485,000.00	5,148,082.76	12,633,082.76	(275,997.92)	4,872,084.84	12,357,084.84	-	-	-	7,485,000.00	4,872,084.84	12,357,084.84
4/1/2032	7,845,000.00	4,799,525.26	12,644,525.26	(275,997.92)	4,523,527.34	12,368,527.34	-	-	-	7,845,000.00	4,523,527.34	12,368,527.34
4/1/2033	8,025,000.00	4,434,164.00	12,459,164.00	(275,997.92)	4,158,166.08	12,183,166.08	-	-	-	8,025,000.00	4,158,166.08	12,183,166.08
4/1/2034	7,840,000.00	4,045,085.00	11,885,085.00	(252,668.68)	3,792,416.32	11,632,416.32	-	-	-	7,840,000.00	3,792,416.32	11,632,416.32
4/1/2035	8,205,000.00	3,678,295.00	11,883,295.00	(227,673.04)	3,450,621.96	11,655,621.96	-	-	-	8,205,000.00	3,450,621.96	11,655,621.96
4/1/2036	8,585,000.00	3,294,111.00	11,879,111.00	(201,219.34)	3,092,891.66	11,677,891.66	-	-	-	8,585,000.00	3,092,891.66	11,677,891.66
4/1/2037	9,010,000.00	2,867,070.00	11,877,070.00	(172,995.10)	2,694,074.90	11,704,074.90	-	-	-	9,010,000.00	2,694,074.90	11,704,074.90
4/1/2038	9,460,000.00	2,418,426.00	11,878,426.00	(142,896.20)	2,275,529.80	11,735,529.80	-	-	-	9,460,000.00	2,275,529.80	11,735,529.80
4/1/2039	9,925,000.00	1,945,507.50	11,870,507.50	(110,530.38)	1,834,977.12	11,759,977.12	-	-	-	9,925,000.00	1,834,977.12	11,759,977.12
4/1/2040	10,415,000.00	1,448,819.00	11,863,819.00	(76,049.12)	1,372,769.88	11,787,769.88	-	-	-	10,415,000.00	1,372,769.88	11,787,769.88
4/1/2041	10,895,000.00	957,349.00	11,852,349.00	(39,558.24)	917,790.76	11,812,790.76	-	-	-	10,895,000.00	917,790.76	11,812,790.76
4/1/2042	2,600,000.00	441,800.00	3,041,800.00	-	441,800.00	3,041,800.00	-	-	-	2,600,000.00	441,800.00	3,041,800.00
4/1/2043	2,705,000.00	337,800.00	3,042,800.00	-	337,800.00	3,042,800.00	-	-	-	2,705,000.00	337,800.00	3,042,800.00
4/1/2044	2,810,000.00	229,600.00	3,039,600.00	-	229,600.00	3,039,600.00	-	-	-	2,810,000.00	229,600.00	3,039,600.00
4/1/2045	2,930,000.00	117,200.00	3,047,200.00	-	117,200.00	3,047,200.00	-	-	-	2,930,000.00	117,200.00	3,047,200.00
	183,285,000.00	152,964,588.53	336,249,588.53	(6,467,699.46)	146,496,889.07	329,781,889.07	17,540,000.00	4,551,714.72	22,091,714.72	200,825,000.00	151,048,603.79	351,873,603.79

**PRELIMINARY OFFICIAL STATEMENT DATED JANUARY \_\_, 2015****NEW ISSUE – BOOK ENTRY ONLY****RATINGS: Moody's: " "****S&P: " "****See "RATINGS" herein.**

*In the opinion of Skinner Fawcett LLP, Boise, Idaho and Ballard Spahr LLP, Salt Lake City, Utah, as Co-Bond Counsel to the Regents of the University of Idaho (the "**Regents**"), interest on the Series 2015A Bonds is excludable from gross income for purposes of federal income tax, assuming continuing compliance with the requirements of the federal tax laws. Interest on the Series 2015A Bonds is not a preference item for purposes of either individual or corporate federal alternative minimum tax; however, interest paid to corporate holders of the Series 2015A Bonds may be indirectly subject to alternative minimum tax under certain circumstance. Co-Bond Counsel are also of the opinion that, under currently existing law, interest on the Series 2015A Bonds is exempt from State of Idaho personal income taxes. See "TAX MATTERS" herein.*

[LOGO]

\$ \_\_\_\_\_ \*

**THE REGENTS OF THE UNIVERSITY OF IDAHO**  
**General Revenue Refunding Bonds**  
**Series 2015A**

**Dated:** Date of Delivery  
as described herein

**Due:** April 1, as shown on the inside cover page

**Denominations:** \$5,000 and integral multiples thereof as described herein.

**Registration/Book-Entry:** The Regents of the University of Idaho General Revenue Refunding Bonds, Series 2015A (the "**Series 2015A Bonds**") are issued as fully registered bonds and, when delivered, will be registered in the name of Cede & Co., as nominee of the Depository Trust Company, New York, New York ("**DTC**"). DTC will act as securities depository for the Series 2015A Bonds. Beneficial Owners of the Series 2015A Bonds will not receive physical bonds, but will receive a credit balance on the books of the nominees of such purchasers.

**Interest Rates With Respect to the Series 2015A Bonds:** The Series 2015A Bonds will bear interest at the fixed rates and mature as shown on the inside cover page of this Official Statement. The interest on the Series 2015A Bonds will be payable on each April 1 and October 1, commencing October 1, 2015. Interest on the Series 2015A Bonds shall be computed upon the basis of a 360-day year, consisting of twelve 30-day months.

**Payment:** Principal, premium, if any, and interest due with respect to the Series 2015A Bonds will be payable by Wells Fargo Bank, N.A., as Trustee (the "**Trustee**"), to DTC, which will, in turn, remit such principal, premium, if any, and interest due with respect to the Series 2015A Bonds.

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**MATURITY SCHEDULE ON INSIDE COVER**

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**Redemption:** The Series 2015A Bonds are not subject to redemption prior to their respective maturities under any circumstances.\*

**Authority:** Article IX, Section 10 of the Constitution of the State of Idaho confirmed the Regents as the governing body for the University of Idaho (the "**University**"). Under Idaho law, the Regents are a body politic and corporate of the State of Idaho. The Series 2015A Bonds are being issued as "Additional Bonds" pursuant to a Resolution adopted by the Regents on November 22, 1991, providing for the issuance of revenue bonds (the "**Original Resolution**"). The Original Resolution provided for the issuance of an initial series of facility revenue bonds and authorized the issuance of additional series of revenue bonds pursuant to Supplemental Resolutions, if certain conditions are met. The Series 2015A Bonds are being issued under a supplemental resolution (the "**2015A Supplemental Resolution**") adopted by the Regents on December 18, 2014. The Original Resolution, as previously restated, amended and supplemented, and as amended and supplemented by the 2015A Supplemental Resolution, is referred to herein as the "**Resolution**." The revenue bonds issued pursuant to the Resolution, including the Series 2015A Bonds, are referred to herein as the "**Bonds**."

**Purposes:** The Series 2015A Bonds are being issued to (i) finance, together with other available funds, the refunding of the University's outstanding Series 2005A Bonds (as further described herein) and (ii) pay costs of issuance associated with the Series 2015A Bonds.

**Security:** The Series 2015A Bonds are being issued as part of the General Revenue Bond System created by the Regents in 2005 and are secured by "**Pledged Revenues**" as defined herein. The lien of the Series 2015A Bonds on the Pledged Revenues is on a parity with the lien thereon of Bonds previously issued by the Regents under the Resolution which, following the delivery of the Series 2015A Bonds, will be Outstanding in the aggregate principal amount of \$ \_\_\_\_\_. The Pledged Revenues include tuition and student fees, sales and service revenues from auxiliary enterprises and educational activities, revenues received for facility and administrative cost recovery in conjunction with grants and contracts, various miscellaneous revenues, and certain investment income. **The Series 2015A Bonds are limited obligations of the Regents and do not constitute a debt or liability of the State of Idaho, its Legislature, or any of its political subdivisions or agencies other than the Regents to the extent herein described. The Regents are not authorized to levy or collect any taxes or assessments other than the fees described herein to pay the Series 2015A Bonds. The Regents have no taxing power.**

**Legal Matters:** The Series 2015A Bonds are offered when, as and if issued and accepted by the Underwriter, subject to prior sale and to the delivery of approving opinions by Skinner Fawcett LLP, Boise, Idaho and Ballard Spahr LLP, Salt Lake City, Utah, as Co-Bond Counsel, and to other conditions. Certain legal matters will be passed upon for the Regents and the University by the University's Counsel, Kent E. Nelson, Esq., Moscow, Idaho; and for the Underwriter by Hogan Lovells US LLP, Denver, Colorado. Piper Jaffray & Co. has acted as a municipal advisor to the Regents in connection with its issuance of the Series 2015A Bonds. It is expected that the Series 2015A Bonds will be available for delivery on or about \_\_\_\_\_, 2015.

**GEORGE K. BAUM & COMPANY**

[logo]

Dated: January \_\_, 2015

\* Preliminary, subject to change.

**MATURITIES, PRINCIPAL AMOUNTS,  
INTEREST RATES AND PRICES**

\$ \_\_\_\_\_ \*

**THE REGENTS OF THE UNIVERSITY OF IDAHO  
General Revenue Refunding Bonds, Series 2015A**

<b><u>Maturity Date (April 1)</u></b>	<b><u>Principal Amount*</u></b>	<b><u>Interest Rate</u></b>	<b><u>Price or Yield</u></b>	<b><u>CUSIP†</u></b>
2017	\$	%	%	
2018				
2019				
2020				
2021				
2022				
2023				
2024				
2025				
2026				

† The Regents take no responsibility for the accuracy of the CUSIP numbers, which are being provided solely for the convenience of the owners of the Series 2015A Bonds.

\* Preliminary, subject to change.

NO DEALER, BROKER, SALESPERSON OR OTHER PERSON HAS BEEN AUTHORIZED BY THE REGENTS OR BY THE UNDERWRITER TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATIONS, OTHER THAN AS CONTAINED IN THIS OFFICIAL STATEMENT, AND IF GIVEN OR MADE, SUCH OTHER INFORMATION OR REPRESENTATIONS MUST NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY THE REGENTS OR BY THE UNDERWRITER. THIS OFFICIAL STATEMENT DOES NOT CONSTITUTE AN OFFER TO SELL OR THE SOLICITATION OF AN OFFER TO BUY THE SERIES 2015A BONDS, NOR SHALL THERE BE ANY SALE OF THE SERIES 2015A BONDS BY ANY PERSON IN ANY JURISDICTION IN WHICH IT IS UNLAWFUL FOR SUCH PERSONS TO MAKE SUCH OFFER, SOLICITATION OR SALE.

THE INFORMATION SET FORTH HEREIN HAS BEEN FURNISHED BY THE REGENTS, THE UNIVERSITY, DTC, AND CERTAIN OTHER SOURCES THAT ARE BELIEVED TO BE RELIABLE BUT IS NOT GUARANTEED AS TO ACCURACY OR COMPLETENESS BY, AND IS NOT TO BE CONSTRUED AS A REPRESENTATION BY, THE UNDERWRITER. THE INFORMATION AND EXPRESSIONS OF OPINION CONTAINED HEREIN ARE SUBJECT TO CHANGE WITHOUT NOTICE. THE DELIVERY OF THIS OFFICIAL STATEMENT AND ANY SALE MADE HEREUNDER WILL NOT, UNDER ANY CIRCUMSTANCES, CREATE AN IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE AFFAIRS OF THE REGENTS OR THE UNIVERSITY SINCE THE DATE HEREOF. ANY STATEMENTS MADE IN THIS OFFICIAL STATEMENT INVOLVING MATTERS OF OPINION OR ESTIMATES, WHETHER OR NOT SO EXPRESSLY STATED, ARE SET FORTH AS SUCH AND NOT AS REPRESENTATIONS OF FACT OR REPRESENTATIONS THAT ESTIMATES WILL BE REALIZED.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER MAY OVER ALLOT OR EFFECT TRANSACTIONS THAT STABILIZE OR MAINTAIN THE MARKET PRICE OF THE SERIES 2015A BONDS AT LEVELS ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZATION, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

THIS OFFICIAL STATEMENT IS NOT TO BE CONSTRUED AS A CONTRACT WITH THE PURCHASERS OF THE SERIES 2015A BONDS.

THE UNDERWRITER HAS INCLUDED THE FOLLOWING SENTENCE FOR INCLUSION IN THIS OFFICIAL STATEMENT. THE UNDERWRITER HAS REVIEWED THE INFORMATION IN THIS OFFICIAL STATEMENT IN ACCORDANCE WITH, AND AS PART OF, ITS RESPONSIBILITIES TO INVESTORS UNDER THE FEDERAL SECURITIES LAWS AS APPLIED TO THE FACTS AND CIRCUMSTANCES OF THIS TRANSACTION, BUT THE UNDERWRITER DOES NOT GUARANTEE THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION.

THE SERIES 2015A BONDS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, IN RELIANCE UPON A SPECIFIC EXEMPTION CONTAINED IN SUCH ACT, NOR HAVE THEY BEEN REGISTERED UNDER THE SECURITIES LAWS OF ANY STATE.

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CAUTIONARY STATEMENTS REGARDING  
PROJECTIONS, ESTIMATES AND OTHER  
FORWARD-LOOKING STATEMENTS IN  
THIS OFFICIAL STATEMENT

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THIS OFFICIAL STATEMENT, INCLUDING BUT NOT LIMITED TO THE MATERIAL SET FORTH UNDER THE CAPTIONS "PLAN OF FINANCE" AND "PRO FORMA AND HISTORICAL PLEDGED REVENUES," CONTAINS STATEMENTS RELATING TO FUTURE RESULTS THAT ARE "FORWARD-LOOKING STATEMENTS." WHEN USED IN THIS OFFICIAL STATEMENT, THE WORDS "ESTIMATES," "INTENDS," "EXPECTS," "BELIEVES," "ANTICIPATES," "PLANS," AND SIMILAR EXPRESSIONS IDENTIFY FORWARD-LOOKING STATEMENTS. ANY FORWARD-LOOKING STATEMENT IS SUBJECT TO RISKS AND UNCERTAINTIES THAT COULD CAUSE ACTUAL RESULTS TO DIFFER MATERIALLY FROM THOSE CONTEMPLATED IN SUCH FORWARD-LOOKING STATEMENTS. INEVITABLY, SOME ASSUMPTIONS USED TO DEVELOP THE FORWARD-LOOKING STATEMENTS WILL NOT BE REALIZED AND UNANTICIPATED EVENTS AND CIRCUMSTANCES WILL OCCUR. THEREFORE, IT CAN BE EXPECTED THAT THERE WILL BE DIFFERENCES BETWEEN FORWARD-LOOKING STATEMENTS AND ACTUAL RESULTS, AND THOSE DIFFERENCES MAY BE MATERIAL. THE REGENTS DO NOT PLAN TO ISSUE ANY UPDATES OR REVISIONS TO THOSE FORWARD-LOOKING STATEMENTS IF OR WHEN ITS EXPECTATIONS CHANGE OR EVENTS, CONDITIONS OR CIRCUMSTANCES ON WHICH THESE STATEMENTS ARE BASED OCCUR.

**THE REGENTS OF THE UNIVERSITY OF IDAHO**

**AND**

**THE STATE BOARD OF EDUCATION**

Emma Atchley – President  
Roderic W. Lewis – Vice President  
Don Soltman – Secretary  
Debbie Critchfield  
Bill Goesling  
David Hill  
Tom Luna  
Richard Westerberg

**UNIVERSITY OFFICIALS**

Chuck Staben – President  
Katherine G. Aiken – Interim Provost and Executive Vice President  
Ronald Smith – Vice President for Finance and Administration and Bursar  
John K. McIver – Vice President of Research and Economic Development  
Vacant – Vice President for University Advancement  
Kent E. Nelson – University Counsel

Finance and Administration  
Administration Building, Room 211  
Moscow, Idaho 83844-3166  
(208) 885-6530

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## OFFICIAL STATEMENT

§ \_\_\_\_\_ \*

**THE REGENTS OF THE UNIVERSITY OF IDAHO**  
**General Revenue Refunding Bonds**  
**Series 2015A**

## INTRODUCTION

This Official Statement, which includes the front cover page, inside cover page, and the Appendices hereto, provides certain information in connection with the offer and sale by the Regents of the University of Idaho (the "**Regents**") of their General Revenue Refunding Bonds, Series 2015A (the "**Series 2015A Bonds**").

The Series 2015A Bonds are being issued pursuant to the supplemental resolution (the "**2015A Supplemental Resolution**") adopted by the Regents on December 18, 2014. The Series 2015A Bonds are being issued as "Additional Bonds" under a bond resolution adopted November 22, 1991 (the "**Original Resolution**"). The Original Resolution, together with the 2015A Supplemental Resolution and previous supplemental resolutions amending, supplementing and restating the Original Resolution and authorizing the issuance of Additional Bonds, are referred to collectively herein as the "**Resolution**," and the Series 2015A Bonds together with all other bonds heretofore or hereafter issued under the Resolution are referred to collectively herein as the "**Bonds**." See "THE SERIES 2015A BONDS." Capitalized terms not otherwise defined shall have the meaning assigned in the Resolution.

*This introduction is not a summary of this Official Statement. It is only a summary description of and guide to, and is qualified by, more complete and detailed information contained in, the entire Official Statement, including the cover page, inside cover page, and appendices hereto, and the documents summarized or described herein. A full review should be made of the entire Official Statement. The offering of the Series 2015A Bonds to potential investors is made only by means of the entire Official Statement. See **Appendix C** for definitions of certain words and terms used herein. See **Appendix D** for a summary of the Resolution.*

**The Regents and the University of Idaho**

A comprehensive land-grant institution, the University of Idaho (the "**University**") is the State of Idaho's (the "**State**") oldest institution of higher learning. Its main campus is located in Moscow, Idaho. With an enrollment of approximately 11,700 full and part-time students, the University has been charged with primary responsibility in the State for advanced research and graduate education. The University was established in Moscow in 1889 by the Territorial Legislature, and provisions of the University's Charter as a territorial university are incorporated into the Idaho State Constitution. Policy direction of the University is vested in the Regents of the University of Idaho (the "**Regents**"), whose members also serve as the Idaho State Board of Education (the "**SBOE**"). See "THE UNIVERSITY," "HISTORICAL PLEDGED REVENUES," "FINANCIAL OPERATIONS OF THE UNIVERSITY" and the audited financial statements of the University in **Appendix A** for financial and other information as to the University and the Regents.

\* Preliminary, subject to change.

*Certain references herein to the "Regents" shall be deemed to refer to the University or other appropriate authority pursuant to the Act and other applicable laws, as appropriate.*

### **Authority for Issuance**

The Regents are authorized by the Educational Institutions Act of 1935, constituting Section 33-3801, et seq. of the Idaho Code, as amended (the "**Act**"), to issue bonds for "projects" (as defined in the Act) and authorized pursuant to the Act and pursuant to Title 57, Chapter 5, Idaho Code, to issue refunding bonds for "projects" as defined in the Act. The Series 2015A Bonds are being issued pursuant to such statutory authorization and pursuant to the Resolution.

### **Purpose of the Series 2015A Bonds**

The Series 2015A Bonds are being issued to provide funds to (i) finance, together with other available funds, the payment and redemption (the "**Refunding Project**") of all of the outstanding University General Revenue Refunding Bonds, Series 2005A (the "**Refunded Bonds**") and (ii) pay costs of issuance associated with the Series 2015A Bonds. See "PLAN OF FINANCE – The Refunding Project." See also "SECURITY FOR THE SERIES 2015A BONDS – No Debt Service Reserve Fund."

### **Terms of the Series 2015A Bonds**

#### *Denominations*

The Series 2015A Bonds are issuable only as fully registered bonds without coupons in denominations of \$5,000, and any integral multiples thereof. See "THE SERIES 2015A BONDS – Generally."

#### *Interest Rates and Payments*

The Series 2015A Bonds are dated their date of delivery and bear interest at the rates shown on the inside cover page of this Official Statement, payable semiannually on April 1 and October 1 of each year, commencing October 1, 2015. Interest on the Series 2015A Bonds shall be computed upon the basis of a 360-day year, consisting of twelve 30-day months.

Principal on the Series 2015A Bonds is payable on the dates and in the amounts shown on the inside front cover of this Official Statement. See "THE SERIES 2015A BONDS – Generally."

#### *No Redemption*

The Series 2015A Bonds are not subject to optional redemption prior to their respective maturities under any circumstances.\* See "THE SERIES 2015A BONDS – No Redemption Prior to Maturity."

#### *Book-Entry System*

The Depository Trust Company, New York, New York ("**DTC**") is acting as securities depository for the Series 2015A Bonds through its nominee, Cede & Co., to which principal and interest payments

\* Preliminary, subject to change.

on the Series 2015A Bonds are to be made. One or more fully registered bonds in denominations in the aggregate equal to the principal amount per maturity of the Series 2015A Bonds will be registered in the name of Cede & Co. Individual purchases will be made in book-entry form only and purchasers of the Series 2015A Bonds will not receive physical delivery of bond certificates, all as more fully described herein. Upon receipt of payments of principal and interest, DTC is to remit such payments to the DTC Participants for subsequent disbursement to the Beneficial Owners of the Series 2015A Bonds. For a more complete description of the Book-Entry System, see "THE SERIES 2015A BONDS – Generally" and **Appendix E** hereto.

**For a more complete description of the Series 2015A Bonds and the Resolution pursuant to which such Series 2015A Bonds are being issued, see "THE SERIES 2015A BONDS" and "Appendix D – SUMMARY OF THE RESOLUTION" hereto.**

### **Payment and Security for the Series 2015A Bonds**

In connection with the issuance of the Refunded Bonds, the Regents began the process of creating a single bond system (the "**General Revenue Bond System**") by combining the revenues previously pledged under the Original Resolution with certain other tuition and student fees and revenues it had previously pledged as security on a stand-alone basis to other bond systems and certain previously unpledged tuition and student fees and revenues. The Regents' strategy in creating the General Revenue Bond System was to enhance the security and source of payment for all of its bondholders, while increasing its financial flexibility, but still maintaining accountability for individual enterprises through internal financial policies. The Series 2015A Bonds are being issued as part of the General Revenue Bond System and under the Resolution. See "SECURITY FOR THE SERIES 2015A BONDS."

The Series 2015A Bonds are secured by the Pledged Revenues as defined in the Resolution (as further described herein, the "**Pledged Revenues**"). The lien of the Series 2015A Bonds on the Pledged Revenues is on a parity with the lien thereon of the Bonds previously issued by the Regents under the Resolution. Following issuance of the Series 2015A Bonds, the Bonds will be Outstanding in the aggregate principal amount of \$\_\_\_\_\_. See "FINANCIAL OPERATIONS OF THE UNIVERSITY – Schedule of Outstanding Indebtedness" for a list of Outstanding Bonds of the Regents as of January 1, 2015. Under the Resolution, the University has covenanted to collect in each Fiscal Year Pledged Revenues equal to not less than 100% of the Annual Debt Service on the Outstanding Bonds and any Additional Bonds for such year. See "SECURITY FOR THE SERIES 2015A BONDS."

The Regents have appointed Wells Fargo Bank, N.A., to serve as Trustee, bond registrar, authenticating agent, paying agent and transfer agent (the "**Trustee**") with respect to the Series 2015A Bonds.

### **Availability of Continuing Disclosure**

On the delivery date of the Series 2015A Bonds, the Regents and the Trustee will enter into a Continuing Disclosure Agreement in which the Regents will agree, for the benefit of the owners of the Series 2015A Bonds, to file with the Municipal Securities Rulemaking Board at its Electronic Municipal Market Access system such ongoing information regarding the University as described in "CONTINUING DISCLOSURE."

\* Preliminary, subject to change.



## Other Information

This Official Statement speaks only as of its date, and the information contained herein is subject to change without notice.

This Official Statement and the Appendices hereto contain brief descriptions of, among other matters, the Regents, the University, the Series 2015A Bonds, the Refunding Project, the Resolution, the Continuing Disclosure Agreement and the security and sources of payment for the Series 2015A Bonds. Such descriptions and information do not purport to be comprehensive or definitive. The summaries of various constitutional provisions and statutes, such contracts, and other documents are intended as summaries only and are qualified in their entirety by reference to such laws and documents, and references herein to the Series 2015A Bonds are qualified in their entirety to the forms thereof included in the Resolution. Copies of such contracts and other documents and information are available, upon request and upon payment to the Trustee of a charge for copying, mailing and handling, from the Trustee at 1700 Lincoln Street, 10<sup>th</sup> Floor, MAC C7300-107, Denver, Colorado 80203, Attention: Corporate Trust, telephone: (303) 863-5235. During the period of offering of the Series 2015A Bonds copies of such documents are available, upon request and upon payment to George K. Baum & Company of a charge for copying, mailing and handling, from George K. Baum & Company at 1400 Wewatta Street, Suite 800, Denver, CO 80202.

## THE SERIES 2015A BONDS

### Generally

General information describing the Series 2015A Bonds appears elsewhere in this Official Statement. That information should be read in conjunction with this summary, which is qualified in its entirety by reference to the Resolution and the form of Series 2015A Bonds included in the 2015A Supplemental Resolution. See "**Appendix C – GLOSSARY OF CERTAIN TERMS USED IN THE RESOLUTION**" and "**Appendix D – SUMMARY OF THE RESOLUTION**."

Each Series of the Series 2015A Bonds will initially be issued as fully registered bonds without coupons in denominations of \$5,000 or any integral multiple thereof. The Series 2015A Bonds will be dated as of the delivery date and will bear interest at the rates and mature on the dates as shown on the inside cover page of this Official Statement.

### Book-Entry System

The Series 2015A Bonds, when issued, will be registered in the name of Cede & Co., as nominee for DTC. Payment of the principal of and interest on the Series 2015A Bonds will be made directly to DTC or its nominee, Cede & Co., by the Trustee. For a description of the method of payment of principal, premium, if any, and interest on the Series 2015A Bonds and matters pertaining to transfers and exchanges while registered in the name of Cede & Co., see "**Appendix E – DEPOSITORY TRUST COMPANY INFORMATION**." So long as the Series 2015A Bonds are registered in the name of Cede & Co., as nominee for DTC, notices or communications to Bondholders with respect to matters described under this caption "THE SERIES 2015A BONDS" will be delivered to DTC or its nominee as registered owner of such Series 2015A Bonds. DTC is responsible for notifying Participants, and Participants (and direct participants in DTC) are responsible for notifying Beneficial Owners of the Series 2015A Bonds. Neither the Trustee nor the Regents is responsible for sending notices to Beneficial Owners. See "**Appendix E – DEPOSITORY TRUST COMPANY INFORMATION**."

**Payment of Interest**

Each Series 2015A Bond will bear interest from and including the delivery date thereof until payment of the principal or redemption price thereof has been made or provided for on the due date thereof in accordance with the provisions of the Resolution, whether at maturity, upon redemption or acceleration or otherwise. Interest on the Series 2015A Bonds shall be computed upon the basis of a 360-day year, consisting of twelve 30-day months.

The Series 2015A Bonds bear interest from their date of delivery to maturity, with the Payment Date for such Series 2015A Bonds on April 1 and October 1 of each year, commencing October 1, 2015.

If a Payment Date is not a Business Day at the place of payment, then payment will be made at that place on the next succeeding Business Day, with the same force and effect as if made on the Payment Date, and, in the case of such payment, no interest will accrue for the intervening period.

The principal of and interest on, and the redemption price of the Series 2015A Bonds shall be payable in lawful money of the United States of America at the principal corporate trust office of the Trustee in Minneapolis, Minnesota, or of any Paying Agent at the option of a Registered Owner. Payment of interest on any fully registered Series 2015A Bond shall be (i) made to the Registered Owner thereof and shall be paid by check or draft mailed to the Registered Owner thereof as of the close of business on the Record Date at his address as it appears on the registration books of the Trustee or at such other address as is furnished to the Trustee in writing by such Registered Owner, or (ii) with respect to units of \$500,000 or more of Series 2015A Bonds, made by wire transfer to the Registered Owner as of the close of business on the Record Date next preceding the interest payment date if such Registered Owner shall provide written notice to the Trustee not less than 15 days prior to such interest payment date at such wire transfer address as such Registered Owner shall specify, except, in each case, that, if and to the extent that there shall be a default in the payment of the interest due on any interest payment date, such defaulted interest shall be paid to the Registered Owners in whose name any such Series 2015A Bond is registered at the close of business on the fifth Business Day next preceding the date of payment of such defaulted interest.

**No Redemption Prior to Maturity**

The Series 2015A Bonds shall not be subject to optional call or other redemption prior to their stated dates of maturity.

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## SECURITY FOR THE SERIES 2015A BONDS

### Pledged Revenues

The Series 2015A Bonds are being issued under the Resolution as part of the General Revenue Bond System created by the Regents in 2005. The Pledged Revenues which secure the Series 2015A Bonds and the other Outstanding and future Bonds issued under the Resolution include the following tuition and student fees and other revenue sources.

- Tuition and student fees (as further described in "Tuition and Student Fees" below).
- Certain sales and services revenues (as further described in "Sales and Services Revenues" below).
- Certain revenues received by the University as reimbursement for facility and administrative costs in conjunction with grants and contracts for research activities conducted by the University (as further discussed under "Facilities and Administrative Recovery Revenues" below, the "**F&A Recovery Revenues**").
- Various revenues generated from miscellaneous sources, including fines and lease/rental revenues (as further discussed in "Other Operating Revenues" below, the "**Other Operating Revenues**").
- Investment Income under the Resolution.
- Direct Payments to be made in connection with the University's Taxable Series 2010B Bonds which are "Build America Bonds."
- Proceeds from the sale of a Series of Bonds and moneys and investment earnings thereon, to the extent pledged by the University pursuant to a supplemental resolution.
- Such other revenues as the Regents shall designate as Pledged Revenues.

The following funds and revenues of the University have not been pledged to payment of debt service on the Series 2015A Bonds or other Bonds as part of the Pledged Revenues:

- General Account Appropriated Funds of the State, which by law cannot be pledged; and
- restricted gift and grant revenues, including land grant endowments received pursuant to the University's land grant status.

See "FINANCIAL OPERATIONS OF THE UNIVERSITY," "HISTORICAL PLEDGED REVENUES" and "**Appendix A – AUDITED FINANCIAL STATEMENTS OF THE UNIVERSITY FOR THE YEARS ENDED JUNE 30, 2014 AND JUNE 30, 2013.**"

**The Series 2015A Bonds are limited obligations of the Regents and do not constitute a debt or liability of the State, its Legislature, or any of its political subdivisions or agencies other than the Regents to the extent herein described. The Regents are not authorized to levy or collect any taxes or assessments other than the fees described herein to pay the Series 2015A Bonds. The Regents have no taxing power.**

## **Tuition and Student Fees**

The Regents have the exclusive ability to establish and collect tuition charges and student fees for resident and non-resident, graduate and professional students attending the University. Tuition and student fee charges are not subject to a referendum by students or approval by any other governmental entity. The Regents have established a policy that the University may not request more than a 10% annual increase in the total full-time tuition and student fees unless otherwise authorized by the Regents. The Regents' established policy is to announce and conduct a public hearing on the modification of any fees, which has traditionally occurred annually, with fee adjustments effective for the subsequent fall term each year. The Regents increased fees by 4% at the April 2014 Regents' meeting, and the increase became effective in the Fall of 2014. There is no prohibition, however, which would preclude the Regents from adjusting fees (for collection beginning with the next academic year) at any time.

For the Fiscal Year ending June 30, 2012, total annual tuition and student fees assessed against full-time undergraduate students were \$5,856 (Idaho residents) and \$18,376 (non-Idaho residents), with the total revenues derived from such tuition and student fees equal to \$78,338,457. For the Fiscal Year ending June 30, 2013, total annual tuition and student fees assessed against full-time undergraduate students were \$6,212 (Idaho residents) and \$19,000 (non-Idaho residents), with the total revenues derived from such tuition and student fees equal to \$82,657,650. For the Fiscal Year ended June 30, 2014, the total annual tuition and student fees assessed against full-time undergraduate students were \$6,524 (Idaho residents) and \$19,600 (non-Idaho residents), with total revenues derived from such tuition and student fees equal to \$83,361,394. On April 16, 2014, the SBOE approved annual tuition and student fees for full-time undergraduate students for Fiscal Year 2015 in the total amount of \$6,784 (Idaho residents) and \$20,314 (non-Idaho residents).

## **Sales and Services Revenues**

Sales and Services Revenues include pledged revenues generated through operations of Auxiliary Enterprises and revenues generated incidentally to the conduct of instruction, research and public service activities. The majority of these revenues are generated through auxiliaries including the Housing System; the Parking System; the Non-Residential Food Service System; Bookstore sales; ticket and event sales; recreation center activity charges; and other miscellaneous operations. See "THE UNIVERSITY" for a description of the University's primary revenue generating facilities. Examples of revenues generated incidentally to education are unrestricted revenues generated by the University's testing and training services, labs, sales of scientific materials, sales of miscellaneous services or products, and sales of agriculture and forest products and publications.

Sales and Services Revenues pledged for the Fiscal Years ended June 30, 2012, June 30, 2013 and June 30, 2014 were \$44,354,807, \$45,689,284 and \$42,861,392, respectively.

## **Facilities and Administrative Recovery Revenues**

Federal, state, and private funds provided to institutions for scientific research consist of two components. The first component is restricted for use by the institution to pay the direct costs of conducting research, such as the salaries for scientists and materials and labor used to perform each project. The second component is granted to pay for so-called "facilities and administrative costs," which encompass spending by the receiving institution on such items as facilities maintenance and renewal, heating and cooling, libraries, the salaries of departmental and central office staff, and other general administration costs. Such component constituting "facilities and administrative costs" is pledged to the Bonds as F&A Recovery Revenues.

The F&A Recovery Revenues pledged for the Fiscal Years ended June 30, 2012, June 30, 2013 and June 30, 2014 were \$10,590,922, \$10,408,306 and \$9,815,977, respectively.

### **Other Operating Revenues**

The University receives other miscellaneous revenues in the course of its operations. Examples of pledged revenues counted in Other Operating Revenues include fines and lease/rental revenues. In the Fiscal Years ended June 30, 2012, June 30, 2013 and June 30, 2014, the University generated pledged Other Operating Revenues in the amounts of \$3,495,016, \$2,983,307 and \$4,200,739, respectively.

### **Investment Income**

Investment Income, which includes all of the University's unrestricted investment income, is pledged to repayment of the Series 2015A Bonds and other Bonds issued under the Resolution. The amount of Investment Income pledged to the Bonds will not match the amount of investment income shown in the University's audited financial statements which includes restricted investment income.

For the Fiscal Years ended June 30, 2012, June 30, 2013 and June 30, 2014, pledged Investment Income earned by the University was \$1,197,651, \$1,218,954 and \$1,832,991, respectively.

### **Use of Pledged Revenues and Other Revenues Not Otherwise Obligated**

After the University has made the payments and deposits required under the Resolution, Pledged Revenues and other amounts remaining in the Revenue Fund held under the Resolution in excess of the amounts necessary to make the required payments thereunder may be used for any legal purpose of the University, including operations and the redemption of the Bonds, subject to policies adopted by the Regents.

### **Covenants**

#### *Covenant to Maintain Coverage*

The Regents are obligated under the Resolution to establish and maintain rates, fees, and charges in amounts sufficient to produce Pledged Revenues in each year equal to 100% of the Debt Service on the Bonds and any Additional Bonds outstanding for each Fiscal Year.

#### *Issuance of Additional Bonds*

The Resolution provides that Additional Bonds secured by Pledged Revenues may be issued by the Regents upon the satisfaction of various conditions specified therein. The amount of Additional Bonds that may be issued is not limited by law or the Resolution.

The Resolution provides for the issuance of Additional Bonds to finance projects or to refund the Bonds issued under the Resolution and other obligations of the Regents or the University. In connection with the issuance of Additional Bonds, the Regents are required to file, among other things, the following documents with the Trustee:

- (i) A copy of the supplemental resolution authorizing the issuance of the Additional Bonds.

(ii) A Written Certificate of the University to the effect that, upon the delivery of the Additional Bonds, the University will not be in default in the performance of any of the covenants, conditions, agreements, terms, or provisions of the Resolution or any supplemental resolution with respect to any Bonds.

(iii) A Written Certificate of the University showing that Estimated Pledged Revenues (assuming completion of the proposed project on its then estimated completion date) will equal at least 100% of the Debt Service on all Outstanding Bonds and any Additional Bonds proposed to be issued for each Fiscal Year of the University during which any Bonds will be Outstanding following the estimated completion date of the project being financed by the Additional Bonds, if interest during construction of the project being financed by the Additional Bonds is capitalized, or (2) the University's current Fiscal Year and any succeeding Fiscal Year during which any Bonds issued will be Outstanding, if interest during construction of the project being financed by the Additional Bonds is not capitalized.

Refunding Bonds may be issued without compliance with the requirements above provided the Refunding Bonds do not increase Debt Service by more than \$25,000 per year.

#### **No Debt Service Reserve Account for the Series 2015A Bonds**

The Resolution does not require the funding or maintenance of a Debt Service Reserve Account for the Bonds issued under the Resolution, including the Series 2015A Bonds, unless the Regents determine otherwise pursuant to a supplemental resolution. See "PLAN OF FINANCE." Furthermore, the Debt Service Reserve Account, which was established in connection with the Series 2005A Bonds which are the Refunded Bonds, will be transferred and used to fund the Refunding Project as described in "PLAN OF FINANCE – The Refunding Project."

#### **Outstanding Bonds; Additional Bonds**

The Regents have previously issued and have outstanding under the Resolution Bonds which, following issuance of the Series 2015A Bonds, will be Outstanding in the aggregate principal amount of \$\_\_\_\_\_.<sup>\*</sup> The Series 2015A Bonds will be secured by the Pledged Revenues on a parity lien basis with the Outstanding Bonds. See "PLAN OF FINANCE" and "FINANCIAL OPERATIONS OF THE UNIVERSITY – Schedule of Outstanding Indebtedness." The Regents have the right under the Resolution to issue Additional Bonds if certain conditions for such issuance are met. See "Covenants – Issuance of Additional Bonds" under this caption for a list of some of such conditions.

<sup>\*</sup> Preliminary, subject to change.

## PLAN OF FINANCE

### Sources and Uses of Funds

The estimated sources and uses of funds relating to the issuance of the Series 2015A Bonds are shown below.

<b>SOURCES OF FUNDS:</b>	<u>Amounts</u>
Series 2015A Bonds Par Amount .....	\$
Net Original Issue Premium.....	
Other available funds <sup>(1)</sup> .....	\$
 TOTAL SOURCES OF FUNDS .....	 \$
 <b>USES OF FUNDS:</b>	
Deposit to the Series 2015A Escrow Account <sup>(2)</sup> .....	\$
For payment of costs of issuance <sup>(3)</sup> .....	\$
 TOTAL USES OF FUNDS.....	 \$

<sup>(1)</sup> Represents amounts transferred from the Debt Service Reserve Fund relating to the Refunded Bonds, which will be deposited to the Series 2015A Escrow Account as described in "The Refunding Project" under this caption.

<sup>(2)</sup> See "The Refunding Project" under this caption.

<sup>(3)</sup> Includes Underwriter's discount, Trustee's fee, rating agencies' fees, printing costs, legal fees and other fees and expenses. See "UNDERWRITING" for a discussion of the Underwriter's compensation.

Source: The Underwriter

### The Refunding Project

Proceeds from the sale of the Series 2015A Bonds will be used to pay and refund on a current basis the Refunded Bonds. The 2015A Supplemental Resolution authorizes the Regents to enter into an escrow agreement with respect to the Refunded Bonds (the "**Escrow Agreement**") with Wells Fargo Bank, N.A., as escrow agent (the "**Escrow Agent**"). The 2015A Supplemental Resolution and the Escrow Agreement provide for the deposit of United States Government Obligations and a cash balance into the Series 2015A Escrow Account created under, and administered pursuant to, the Escrow Agreement sufficient to pay the current interest, principal due and the redemption price on the Series 2005A Bonds on April 1, 2015.

### DEBT SERVICE REQUIREMENTS

The following table sets forth the Annual Debt Service Requirements for the Regent's Outstanding Bonds (taking into account the proposed issuance of the Series 2015A Bonds):

<u>Fiscal Year</u>	<u>Outstanding Bonds</u>	<u>Series 2015A Bonds</u>		<u>Total<sup>(3)*</sup></u>
	<u>Total Debt Service<sup>(1)(2)(3)</sup></u>	<u>Principal<sup>(1)*</sup></u>	<u>Interest<sup>(4)*</sup></u>	
2015	\$	\$	\$	\$
2016				
2017				
2018				
2019				
2020				
2021				
2022				
2023				
2024				
2025				
2026				
2027				
2028				
2029				
2030				
2031				
2032				
2033				
2034				
2035				
2036				
2037				
2038				
2039				
2040				
2041				
2042				
2043				
2044				
2045				
Total	\$	\$	\$	\$

(1) Principal payable April 1. In the case of certain Outstanding Bonds, these principal payments are being made upon mandatory sinking fund redemption rather than at maturity.

(2) Interest payable April 1 and October 1. Interest requirements are stated net of Direct Payments associated with the Series 2010C Bonds. Direct Payments through the final maturity of the Series 2010C Bonds have been decreased by 7.3% to reflect the ongoing impact of the current federal sequestration. For the Series 2007B and the Series 2011 Adjustable Rate Bonds, interest payments are calculated based on an interest rate assumption of 4.50% following initial term period ending April 1, 2018 and April 1, 2021, respectively.

(3) Assumes refunding of the Refunded Bonds. Subject to change.

(4) Payable April 1 and October 1, commencing October 1, 2015. Calculated using assumed interest rates for purposes of this Preliminary Official Statement.

Source: The Underwriter

\*Preliminary, subject to change.



## HISTORICAL PLEDGED REVENUES

The following table shows the revenue sources that are pledged as part of the General Revenue Bond System.

	Fiscal Year Ended June 30				
	2010	2011	2012	2013	2014
<b>Source of Pledged Revenues</b>					
Tuition and Student Fees	\$65,097,956	\$78,626,119	\$78,338,457	\$82,657,650	\$83,361,394
Sales and Services Revenues	39,694,341	43,068,366	44,354,807	45,689,284	42,861,392
Other Operating Revenues	2,358,795	3,617,633	3,495,016	2,983,307	4,200,739
Investment Income <sup>(1)</sup>	2,072,365	1,454,834	1,197,651	1,218,954	1,832,991
F&A Recovery Revenues	9,919,603	10,727,148	10,590,922	10,408,306	9,815,977
Direct Payments for Series 2010C Bonds	<u>0</u>	<u>309,311</u>	<u>297,732</u>	<u>297,732</u>	<u>274,063</u>
<b>Total Pledged Revenues</b>	\$119,143,060	\$137,803,411	\$138,274,585	\$143,255,233	\$142,346,556
<b>Debt Service on Bonds<sup>(2)</sup></b>	\$11,110,027	\$12,302,937	\$12,902,303	\$12,720,128	\$12,909,568
<b>Debt Service Coverage</b>	10.72x	11.20x	10.72x	11.26x	11.03x

(1) Differs from the information in the University's audited financial statements due to the inclusion of restricted investment income.

(2) Represents actual gross debt service on the Outstanding Bonds due and paid during the Fiscal Years as indicated. Interest requirements are net of Direct Payments associated with the Series 2010C Bonds. See "DEBT SERVICE REQUIREMENTS."

Source: The University's unaudited financial records.

[The Debt Service Coverage of the Pledged Revenues in 2014 less the Direct Payments for the Series 2010C Bonds over the maximum annual debt service of Outstanding Bonds (after issuance of the Series 2015A Bonds and refunding of the Refunded Bonds) is estimated to be \_\_\_\_x\* (2014 Pledged Revenues of \$\_\_\_\_\_ less the 2014 Direct Payment of \$\_\_\_\_\_ divided by gross maximum annual debt service on the Outstanding Bonds after issuance of the Series 2015A Bonds and refunding of the Refunded Bonds of \$\_\_\_\_\_\*)]. See "DEBT SERVICE REQUIREMENTS."

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\* Preliminary, subject to change.

## THE UNIVERSITY

### Generally

Student body representation at the University is from every state in the United States and approximately 80 foreign countries. The University alumni population exceeds 95,000. The University's main campus is located in Moscow, Idaho, a community of approximately 23,800 people in the northern portion of the State, about one-mile east of the Washington border and approximately 80 miles south of Coeur d'Alene, Idaho.

University property includes approximately 11,700 acres and 315 buildings, of which 1,585 acres and 251 buildings are located at its main campus in Moscow. The University operates twelve research centers and institutes and six demonstration and training farms with a total acreage of about 1,000 acres used by forestry and agricultural students. The University owns and actively manages 8,160 acres of forest lands, a wilderness field research station in Idaho's primitive area, a veterinary teaching center, and ten research and extension centers in agricultural areas throughout Idaho. The University also operates a Research Park in Post Falls and Resident Instructional Centers in Boise, Coeur d'Alene and Idaho Falls. The University's McCall Outdoor Science School ("**MOSS**") is located on the McCall Field Campus and borders Payette Lake and Ponderosa State Park. MOSS offers a one-of-a-kind learning experience for Idaho youth, graduate students, teachers and the local community, and was funded with proceeds of the University's Taxable Series 2013B Bonds. The University is using proceeds of its Series 2014 Bonds to finance construction of a new facility on the Moscow campus referred to as the Integrated Research and Innovation Center ("**IRIC**"). The University expects construction of the IRIC to be completed by the summer of 2016. Proceeds of the Series 2014 Bonds are also being used by the University to fund, in part, a renovation of the College of Education Building on the Moscow campus, expected to be fully functional and operational for the Fall Semester 2016.

The University's academic structure includes ten degree-granting colleges: the Colleges of Agricultural and Life Science; Art and Architecture; Business and Economics; Education; Engineering; Graduate Studies; Law; Letters, Arts and Social Sciences; Natural Resources; and Science. In addition to degree programs in each of these colleges, the University includes a College of Graduate Studies and offers medical training for students in association with the University of Washington, School of Medicine. The University has several cooperative programs with Washington State University (located in Pullman, Washington, eight miles from Moscow), including a joint veterinary medical program. This cooperative graduate program has veterinary training facilities in Caldwell, Idaho, which are operated by the University. The University has an optional officer education program, leading to a regular or reserve commission in the U.S. Army, Navy, Marines or Air Force.

### Student Body

The University admits all Idaho residents who graduate from accredited high schools with an overall grade point average of at least 3.0 and who completed a defined set of core high school classes. Those with less than a 3.0 high school grade point average must meet set ACT or SAT scores. Home school students, graduates of non-accredited high schools, or students not meeting the admission criteria are considered by a special admission committee. Approximately 69% of the University's fall 2014 student body were residents of the State. The tables on the following page set out certain statistics concerning the University's enrollment for the Fall Terms of the years indicated.

## Five-Year Historical Enrollment Summary

(Fall Semester, 10<sup>th</sup> Day of Classes 2010-2011, Census Date 2012-2014)<sup>(1)</sup>

	2010	2011	2012 <sup>(2)</sup>	2013 <sup>(2)</sup>	2014 <sup>(2)</sup>
<b>Students</b>					
Full-Time Equivalents (FTE)	10,398.3	10,490.7	10,105.0	10,020.4	9,791.8
Head Count	12,302	12,312	12,420	12,024	11,702
<b>Undergraduate Students</b>	<b>Academic Head Count</b>				
Full-time:					
Residents	5,716	5,954	5,741	5,751	5,552
Non-residents	2,848	2,752	2,403	2,260	2,166
Subtotal	8,564	8,706	8,144	8,011	7,718
Part-time:					
Residents	1,029	864	1,672	1,328	1,327
Non-residents	250	240	305	201	238
Subtotal	1,279	1,104	1,977	1,529	1,565
<b>Graduate Students</b>					
Full-time:					
Residents	726	731	669	614	630
Non-residents	703	712	675	762	766
Subtotal	1,429	1,443	1,344	1,376	1,396
Part-time:					
Residents	705	700	642	674	592
Non-residents	325	359	313	434	431
Subtotal	1,030	1,059	955	1,108	1,023
<b>Total Undergraduate</b>	9,843	9,810	10,121	9,540	9,283
<b>Total Graduate Students</b>	2,459	2,502	2,299	2,484	2,419
<b>Grand Total</b>	12,302	12,312	12,420	12,024	11,702
<b>Freshmen Students</b>	<b>Freshman Class Statistics</b>				
Applying	5,906	8,248	7,467	7,994	8,510
Accepted	4,022	5,020	4,903	5,173	5,750
Enrolled	1,757	1,631	1,617	1,630	1,590
Resident	1,145	1,207	1,178	1,190	1,146
Average ACT Score	23.3	23.0	23.2	23.0	23.6
Average SAT Score	1,090	1,088	1,085	1,045	1,051
Average High School GPA	3.35	3.34	3.38	3.40	3.41
Percentage graduating in the top 25% of their high school class	44.4	44.0	44.0	42.0	45.0

Source: The University

<sup>(1)</sup> In fall 2012 the University enrollment report date was changed from 10th day of classes to October 15th at the direction of the Regents.<sup>(2)</sup> Headcount information is federally reported to IPEDS. Beginning in 2012, professional development only students or co-op students are not included while prior to 2012 IPEDS they were included.

## Housing and Student Union Facilities

The University's housing and student union facilities (the revenues from which constitute Auxiliary Enterprise revenues pledged as part of the Pledged Revenues) currently include (i) 12 residence hall buildings containing dormitory style student living; (ii) three apartment complexes, providing housing for upper class students and students with families; (iii) the Idaho Commons Building (the "**Commons**"); and (iv) the Student Union Building (the "**Student Union**").

*University Residence Halls.* The 12 University residence hall buildings can accommodate up to 2,153 students. The University's residence halls offer a variety of amenities including: (i) computer labs and in-room wireless high-speed internet; (ii) recreational and lounge space; (iii) laundry facilities; (iv) kitchen areas; and (v) academic/study space. Over the past five Fiscal Years ending June 30, 2014, the average occupancy rate for the University's residence halls was 88%, and the occupancy rate for Fall 2014 was 94%.

*University Apartments.* Currently, the University has three apartment complexes, which provide 215 apartments ranging in size from one-bedroom to four bedrooms available for occupancy by students and their families. Amenities available at University apartment complexes include: (i) high-speed wireless internet connections; (ii) in-apartment laundry hook-ups; (iii) play areas; and (iv) a community center. The average occupancy rate for the University's apartments over the past five Fiscal Years ending June 30, 2014, was 95%, and the occupancy rate for Fall 2014 was 92%.

*Idaho Commons Building.* Completed in 2000, the Idaho Commons Building is designed to be the center of campus life and provide programs, amenities, and services to enhance the educational experience of University students. The Commons is a multi-use facility with approximately 100,000 square feet. The facility houses offices for student government, other student organizations, conference rooms with state of the art technology, and academic support services. In addition, the Commons has an information desk, food court, coffee shop, convenience store, satellite University bookstore, credit union, copy center, art gallery, computer kiosks, ATMs and administrative offices. The facilities infrastructure includes high-speed LAN and video data capabilities, public lounges, wireless network, computer checkout, and flat screen monitors to provide information about building and campus activities.

*Student Union Building.* The approximately 103,500 square foot Student Union is a multi-use facility. Student services were relocated to the Student Union after completion of a renovation in 2000. Currently, the facility houses Student Accounts, the Registrar, Admissions, Student Financial Aid, New Student Services, Jazz Festival, College Assistance Migratory Program, and Student Media Services. In addition, the Student Union has an information desk, conference facilities, including a large ballroom, a movie theatre, and several small meeting rooms, a cafe, ATMs, and a computer lab.

## Spectator and Recreation Facilities

The University's spectator and recreation facilities (the revenues from which constitute Auxiliary Enterprise revenues pledged as part of the Pledged Revenues) include the Kibbie Dome, the Memorial Gym, the Recreation Center, the Dan O'Brien Track Complex, and the University Golf Course. Following is a brief description of these facilities.

*Kibbie Dome.* The Kibbie Dome was originally constructed in 1972 and is North Idaho's largest athletic spectator facility. It is used for intercollegiate home football games, basketball games, indoor track and field events, as well as high school football playoffs, the Lionel Hampton Jazz Festival, concerts, sport camps, conferences, classes, intramurals, student club activities, and University commencements. In 1984, the "East End" was added to the Kibbie Dome and includes a weight room, recreational and

varsity locker rooms, eight racquetball courts, and athletic training rooms and offices. In 2009, the University completed another expansion of the Kibbie Dome to add the "Vandal Athletic Center," which included a 7,000 square foot weight room, a 1,500 square foot exercise area, an aquatic exercise pool, and a new foyer. In 2010 and 2011, the end walls were replaced with state-of-the-art translucent panels as part of a major renovation to bring the building up to code. In conjunction with the end-wall replacement and fire-safety measures, expanded premium seating, suites and loge boxes were added and the press box was completely rebuilt.

*Memorial Gym.* The Memorial Gymnasium, constructed in 1928, is the oldest athletic building on campus. The building serves as one of the University's indoor sports and entertainment complexes. In addition to hosting varsity volleyball and basketball, the Memorial Gym is used for concerts, community events, state gymnastics meets, regional basketball tournaments, intramural activities and physical education classes, and houses a gymnasium, multi-purpose room, combative room, locker rooms, and various offices.

*The Recreation Center.* The Student Recreation Center was completed in 2002. It is approximately 85,500 square feet in size, and includes more than 7,200 square feet of open recreational space, two regulation-size basketball courts, a multipurpose gymnasium, a large aerobics/cardiovascular multipurpose workout space, a running track, a climbing wall, a child care center, a first-aid and athletic training area, classroom and activity spaces, a cafeteria, and space for rental of recreational equipment.

*Dan O'Brien Track Complex.* The Dan O'Brien Track, named in 1996 for University alumnus and 1996 Olympic Decathlon Gold Medalist Dan O'Brien, was constructed in 1969 and renovated in 2012, and serves as the University's outdoor varsity and recreational track facility. It consists of a 400-meter, 8-lane track, a long jump area, a throwing area, a high jump area, a pole vault area, coaches' offices, and spectator facilities that accommodate approximately 1,000 spectators.

*University Golf Course.* The University owns and operates an 18-hole golf course on the University's Moscow campus. The course is open to the public approximately eight months each year and provides lessons, cart and club rentals, and a retail pro shop.

## **Parking Facilities**

Currently, the University operates and maintains 99 surface parking lots with a total of approximately 6,000 parking spaces. The University has a comprehensive parking plan to ensure that the Parking System is financially self-supporting.

## **Employees and Faculty**

As of June 30, 2014, the University had 2,523 employees, consisting of 788 faculty, 205 Research Assistants/Teaching Assistants (which are not considered to be part of the faculty) and 1,530 staff and administration. The student to faculty ratio in the Fall of 2014 was 17 to 1. Employees are not subject to the State's civil service system; however, the University has adopted a personnel policy with respect to classified employees that is substantially similar to the State's civil service system. The University is not a party to any collective bargaining agreements, although there are employee associations that bring any salary issues and concerns to the attention of the University. The University considers its relations with its employees to be good.

## **Employee Retirement Plan; Post Retirement Health Benefits**

Most employees of the University are eligible for one of two retirement plans: the State of Idaho's "Public Employees Retirement System of Idaho" ("**PERSI**") and the "Optional Retirement Plan" ("**ORP**"), which has been offered to non-classified employees since 1990.

PERSI provides a defined benefit plan and covers eligible classified and exempt personnel who work 20 hours or more per week. The membership of PERSI includes employees of the State of Idaho, teachers, firemen, police and employees of political subdivisions, local school districts, colleges and universities.

Faculty and exempt staff hired on or after July 1, 1990, have been enrolled in the ORP and faculty and exempt staff hired before that date were offered a one-time opportunity in 1990 to withdraw from PERSI and join the ORP. The ORP is a portable, defined contribution retirement plan with options offered by Teachers' Insurance and Annuity Association/College Retirement Equities Fund and Variable Annuity Life Insurance Company. The total contribution rate will be the same for all employees, with a portion of the employer's contribution for ORP members being credited to the employee's account and a portion to the PERSI unfunded liability until 2025. The ORP covers eligible exempt personnel who work 20 hours or more per week. Based on the audited financial statements for the Fiscal Year 2014, the University had unfunded obligations for post-employment retirement benefits in Fiscal Year 2014 of \$36,723,000.

In addition, the University has taken proactive steps to effectively manage and reduce its GASB 45 liability for obligation of post-employment benefits (OPEB) related to retiree health. The University's GASB liability was recorded and recognized on its financial statements for the first time in Fiscal Year 2008. Program changes which include steeper eligibility requirements, retiree cost sharing, integration with Medicare Prescription Drug programs and elimination of some future benefits have reduced the Annual Required Contribution (ARC) from projections of \$5.863 million as forecasted in Fiscal Year 2010 to \$3.368 million for Fiscal Year 2014. The University maintains its funding of the ARC in each Fiscal Year to a level sufficient to ensure that it does not result in the recognition of an unfunded liability.

Beginning with the fiscal year that commences July 1, 2014, the University will be required to record a liability and expense equal to its proportionate share of the collective net pension liability and expense of PERSI due to the implementation of GASB 68. PERSI has not yet determined the University's or other cost-sharing employers' proportionate shares of such liability, and the University cannot determine at this time what its proportionate share will be or what impact any additional funding obligation of the University with respect to its proportionate share will have on the University. The University expects to receive a report from PERSI as to the allocation and effect of PERSI's unfunded liability in early calendar year 2015.

For information concerning post-retirement health benefits, see Note 14, "POST EMPLOYMENT BENEFITS OTHER THAN PENSIONS AND RETIREE BENEFITS TRUST," in the audited financial statements included in "**Appendix A – AUDITED FINANCIAL STATEMENTS OF THE UNIVERSITY FOR THE YEARS ENDED JUNE 30, 2014 AND JUNE 30, 2013.**"

## **Insurance**

The University maintains liability, property, and employee fidelity insurance in amounts deemed adequate by University officials. The University has a full-time risk management staff that administers insurance coverage and claims, and reviews the adequacy of such policies and verifies the University's

compliance with insurance requirements imposed by agreements, such as the Resolution. As of June 30, 2014, the total insured replacement value of the University's buildings, contents and improvements was approximately \$1.63 billion.

The University began self-funding its medical and dental programs for active employee and retiree health starting July 1, 2005. Self-funding is a financial arrangement in which medical claims are administered by a third-party administrator, but paid directly from University funds instead of by an insurer. The financial risk of the self-funding arrangement is managed through the creation of a financial reserve established by the University to fund unexpected claims and incurred-but-not-reported claims in the event that the self-funding arrangement is ever terminated. In addition, the University's financial exposure for unexpected claims are limited through the purchase of reinsurance (stop-loss coverage) for both individual and aggregate claim liability. When comparing self-funded cost to a fully insured program, the University estimates an approximate savings of \$1 million per year in cost under the self-funded health arrangement.

The University continues to take a proactive approach managing its health plans, including offering a High Deductible Health Plan with an HSA, expanding their coverage for wellness related services, and working with an employee advisory group to address needs and concerns of University employees.

## FINANCIAL OPERATIONS OF THE UNIVERSITY

The University relies on a number of sources of funding for the achievement of its educational and research missions. The principal sources of revenues are: direct appropriation of State general account revenues by the Idaho Legislature, Tuition and Student Fees, federal government appropriations and grants, gifts to the University, Investment Income, revenues derived from property holdings of the University, land grant endowments received pursuant to the University's land grant status, Sales and Service Revenues and Other Revenues. See "**Appendix A – AUDITED FINANCIAL STATEMENTS OF THE UNIVERSITY FOR THE YEARS ENDED JUNE 30, 2014 AND JUNE 30, 2013.**" Of these revenue sources, Tuition and Student Fees, Investment Income, Sales and Services Revenues, and Other Revenues are pledged to the Bonds, including the Series 2015A Bonds. See "SECURITY FOR THE SERIES 2015A BONDS" for a description of University revenues pledged to the Bonds. The University's other revenue sources not constituting Pledged Revenues are more fully discussed below.

### State Appropriations

Legislatively approved State general account original appropriations in Fiscal Year 2015 represent slightly more than 36% percent of the total University budget. The State legislature meets beginning in January of each calendar year and sets budgets and appropriations for all agencies and departments of State government for the Fiscal Year beginning on the ensuing July 1. The legislature may also make adjustments to budgets and appropriations for the Fiscal Year during which the legislature is meeting.

If in the course of a Fiscal Year, the Governor determines that the expenditures authorized by the Legislature for the current Fiscal Year exceed anticipated revenues expected to be available to meet those expenditures, the Governor by executive order may reduce ("**Holdback**") the spending authority on file in the office of the Division of Financial Management for any department, agency, or institution of the State or request a reversion ("**Reversion**") of appropriations back to the State to balance the State budget.

The table below sets forth the legislative appropriations from the State General Fund for colleges and universities and for the University net of Reversions.

**Schedule of State General Account Appropriations**

<u>Fiscal Year</u>	<u>University of Idaho State Appropriations</u>	<u>Total State Appropriations Colleges &amp; Universities</u>	<u>Total State General Fund</u>	<u>University of Idaho % of Total State General Fund</u>
2015	\$90,481,200	\$251,223,200	\$2,936,096,600	3.08%
2014	83,880,300	236,543,600	2,781,023,800	3.02
2013	81,203,000	227,950,500	2,702,105,700	3.01
2012	77,171,800	209,828,300	2,528,960,600	3.05
2011	80,271,500	217,510,800	2,383,836,000	3.37

### **Grants and Contracts**

The United States government and various other public and private sponsoring agencies, through various grant and contract programs, provide a substantial percentage of the University's operating revenues. The use of such funds is usually restricted to specific projects. Such revenues include grants and contracts for research, public service, instruction and training programs, fellowships, scholarships, endowment scholarship programs, and student aid programs, and grants for construction projects. The University believes it has complied with all material conditions and requirements of these various grants and contracts.

### **Financial Assistance**

Financial assistance, primarily in the form of student loans, scholarships, grants, student employment, awards, and deferred payments, is available to students. The University believes that the amount of available financial aid is adequate. During the 2013-2014 academic year, the total financial assistance to students received at the University was approximately \$110 million, of which approximately \$65.7 million was in the form of direct student loans. No assurance can be given that the level of assistance available in the past will continue.

### **Federal Appropriations**

In accordance with the University's designation as a land grant institution, the United States government provides the University with funds for specific programs. Like most federal governmental programs, however, there is no assurance that these funds will continue to be appropriated.

### **Land Grant Endowments**

The University is the State's land grant university, and as such is entitled to revenues from certain State lands.

### **Budget Process/Financial Reports**

The University operates on an annual budget system. Its Fiscal Year begins July 1 of each year. The budget process, as well as the administration of the expenditures authorized through the process, is administered through the offices of the President and the Vice President for Finance and Administration in collaboration with the departmental faculty and other administrative officers. The internal budget



process concludes with a general budget proposal for the following Fiscal Year being submitted in consolidated form by the University administration to the Regents in August of each year.

The University's budget is approved by the Regents prior to the commencement of the Fiscal Year, usually at the June meeting. At that meeting, the Regents, in their capacity as members of the State Board of Education, approve the annual budgets for the other institutions of higher education as well.

### Future Plans

A proposed future Research and Classroom building of approximately 80,000 square feet is planned by the University. The overall project cost of the building is estimated at \$24 million. Funding is expected to come from bonds (\$12 million), State funding (\$8 million), federal funding (\$1 million), and corporate private giving (\$3 million). Timing of the project will be linked to the timing and availability of other fund sources, especially State funding, and is currently projected for FY2017.

### Schedule of Outstanding Indebtedness

Set forth below is the schedule of outstanding indebtedness of the Regents as of January 1, 2015 incurred to provide funding for the University, which does not reflect the issuance of the Series 2015A Bonds.

<b>Name of Issue</b>	<b>Date Incurred</b>	<b>Final Maturity Date</b>	<b>Principal Amount of Original Indebtedness</b>	<b>Principal Amount of Debt Outstanding (January 1, 2015)</b>
General Revenue Refunding Bonds, Series 2005A <sup>(1)</sup>	2005	2026	\$ 30,740,000	\$ 22,285,000
Adjustable Rate General Revenue Bonds, Series 2007B	2007	2041	35,035,000	35,035,000
General Revenue Refunding Bonds, Series 2010A	2010	2016	10,230,000	2,700,000
General Revenue Bonds, Series 2010B	2010	2032	10,150,000	10,150,000
Taxable General Revenue Bonds, Series 2010C	2010	2041	13,145,000	13,145,000
Adjustable Rate General Revenue Refunding Bonds, Series 2011	2011	2041	60,765,000	57,940,000
General Revenue and Refunding Bonds, Series 2013A	2013	2033	8,745,000	7,720,000
Taxable General Revenue Bonds, Series 2013B	2013	2033	6,325,000	6,065,000
General Revenue Bonds, Series 2014	2014	2045	<u>48,660,000</u>	<u>48,660,000</u>
Total Bonded Indebtedness <sup>(2)</sup>			<u>\$223,795,000</u>	<u>\$203,700,000</u> <sup>(3)</sup>
Other indebtedness, consisting of notes payable and line-of-credit with interest rates ranging from 3.245% to 5.00%, due through the year 2019	2002	2019	<u>\$8,073,388</u>	<u>\$730,556</u>

<sup>(1)</sup> These are the Refunded Bonds.

<sup>(2)</sup> All of these Bonds are currently Outstanding under the Resolution.

<sup>(3)</sup> This amount does not take into account the issuance of the Series 2015A Bonds.

Source: The University

### University Total Net Assets

The University's total net assets for the last five Fiscal Years are included in the table below. Financial information concerning the University is contained in the University's audited financial statements included in **Appendix A** hereto.

University of Idaho Net Assets <sup>(1)</sup>					
<u>Fiscal Year</u>	<u>Unrestricted</u>	<u>Restricted Expendable</u>	<u>Restricted Nonexpendable</u>	<u>Invested in Capital Assets</u>	<u>Total</u>
2014	\$65,015,217	\$31,913,000	\$0 <sup>(1)</sup>	\$248,651,560	\$345,580,208
2013	55,673,290 <sup>(2)</sup>	28,851,316	0 <sup>(1)</sup>	243,070,923	327,595,529 <sup>(2)</sup>
2012 <sup>(3)</sup>	63,954,298	24,796,022	74,859,032	239,981,523	403,590,875
2011 <sup>(3)</sup>	52,713,170	24,613,253	78,191,004	246,836,404	402,353,831
2010	26,298,058	74,964,487	67,829,850	211,194,033	380,286,428

<sup>(1)</sup> See "FINANCIAL OPERATIONS OF THE UNIVERSITY – University of Idaho Foundation" and "- Change in Reporting for CIT Assets – University Release and Waiver."

<sup>(2)</sup> The University restated its Fiscal Year 2013 audited financial statements as a result of a requirement under GASB 65 that it write off deferred issuance costs previously reported as noncurrent assets. See footnote 1 to the audited financial statements ("New Accounting Standards") for Fiscal Year 2014 included in **Appendix A** hereto.

<sup>(3)</sup> During Fiscal Year 2012, the University, in reviewing authoritative guidance provided under GASB-34 concerning the proper classification of net assets, reclassified Fiscal Year 2011 and 2012 net asset category balances to be more accurately aligned with government reporting standards.

### University and Foundation Total Net Assets

The University and Foundation consolidated total net assets for the last five Fiscal Years are included in the table below. Financial information concerning the University and the Foundation is contained in the University's audited financial statements included in **Appendix A** hereto.

University of Idaho and University of Idaho Foundation Consolidated Net Assets <sup>(1)</sup>			
<u>Fiscal Year</u>	<u>University</u>	<u>Foundation</u>	<u>Total</u>
2014	\$345,580,208	\$282,921,731	\$628,501,939
2013	327,595,529 <sup>(2)</sup>	243,417,063	571,012,592 <sup>(2)</sup>
2012	403,590,875	148,173,954	551,764,829
2011	402,353,831	150,781,113	553,134,944
2010	380,286,428	129,372,417	509,658,845

<sup>(1)</sup> See "FINANCIAL OPERATIONS OF THE UNIVERSITY – University of Idaho Foundation" and "- Change in Reporting for CIT Assets – University Release and Waiver."

<sup>(2)</sup> See footnote (2) above under "University Total Net Assets."

### University and Foundation Cash and Investments

The University and Foundation consolidated cash and investments for the last five Fiscal Years are detailed in the table below. Financial information concerning the University and the Foundation is contained in the University's audited financial statements included in **Appendix A** hereto.

**University of Idaho and University of Idaho Foundation**  
**Consolidated Cash and Investments**

<u>Fiscal Year</u>	<u>University Cash</u>	<u>Foundation Cash</u>	<u>University Investments</u>	<u>Foundation Investments<sup>(1)</sup></u>	<u>Total</u>
2014	\$23,305,559	\$33,342,212	\$72,140,293	\$255,210,031	\$383,998,095
2013	25,297,434	23,604,007	63,362,594	225,208,891	337,472,926
2012	15,610,602	21,943,845	69,794,350	205,440,387	312,789,184
2011	65,287,221	17,543,061	21,245,978	213,473,325	317,549,585
2010	57,390,936	23,692,355	38,183,910	174,912,118	294,179,319

<sup>(1)</sup> Includes University Assets Held in Trust by Foundation. See "Change in Reporting for CIT Assets – University Release and Waiver" under this caption.

**University of Idaho Foundation**

The Foundation is a nonprofit corporation organized under Idaho law in 1970. Its purpose is to receive, manage and otherwise deal in property and apply the income, principal and proceeds of such property for the benefit of the University. A 25-member board of directors, elected annually by the Foundation members, manage the Foundation.

The Foundation receives all gifts to the University and transfers such gifts to the donor-designated area within the University on a regular schedule. In addition, it manages the endowment funds in a pooled investment fund referred to as the Consolidated Investment Trust (the "CIT"). Earnings from the CIT are transferred annually to the University. Some assets invested in the CIT (the "**Indenture Assets**") are held in trust for the University pursuant to an Indenture Agreement. The Indenture Assets were previously shown as an asset and liability on the Foundation financial statements. In 2013, the University agreed to waive restriction on the Indenture Assets, and as explained in greater detail under "Change in Reporting for CIT Assets – University Release and Waiver," this waiver effected completion of the full transfer of these assets to the Foundation such that dual reporting as asset and liability on the Foundation financial statements (as well as reporting those assets and the change in market value of those assets on the University financial statements) will no longer be necessary after Fiscal Year 2013.

Since Fiscal Year 2004, the University has been required to discretely present the Foundation as a component unit. Financial information concerning the Foundation is contained in Note 20 to the University's audited financial statements included in **Appendix A** hereto. The table below illustrates total net assets over the last five Fiscal Years.

**University of Idaho Foundation**  
**Net Assets**

<u>Fiscal Year</u>	<u>Unrestricted</u>	<u>Restricted Expendable</u>	<u>Restricted Nonexpendable</u>	<u>Total</u>
2014	\$5,946,595	\$74,414,683	\$202,560,453	\$282,921,731
2013	5,049,512	49,327,121 <sup>(1)</sup>	189,040,430 <sup>(1)</sup>	243,417,063
2012	5,219,854	32,145,781	110,808,319	148,173,954
2011	5,382,690	33,729,970	111,668,453	150,781,113
2010	4,380,322	29,719,205	95,272,890	129,372,417

<sup>(1)</sup> In the University's audited financial statements for Fiscal Years 2012 and 2013, unrealized appreciation was included in "Restricted Nonexpendable" net assets. However, based on a recommendation of the auditor, unrealized appreciation has been included in "Restricted Expendable" net assets for Fiscal Year 2014. See footnote 17 to the audited financial statements for Fiscal Year 2014 ("Donor Restricted Endowments") included in **Appendix A** hereto..

**Change in Reporting for CIT Assets – University Release and Waiver**

The CIT was established at the University of Idaho in July 1959 to allow pooling of endowment assets for investment purposes. In 1974, the Regents authorized the University to transfer the CIT to the Foundation in trust under the terms and conditions of an Indenture Agreement. The Foundation has managed the Indenture Assets transferred through the Indenture Agreement since that time. As of February 8, 2013, the value of the Indenture Assets transferred to the Foundation under the Indenture Agreement was \$80,990,338. (See footnote 19 of the FY 2014 Audited Financial Statement in **Appendix A** hereto.)

The Indenture Assets were transferred pursuant to the Indenture Agreement to the Foundation "in trust," reserving the right in the Regents to revoke the Indenture Agreement or to withdraw the Indenture Assets at any time. Consequently, the transfer from the University to the Foundation was not a complete one, and generally accepted accounting principles ("GAAP") applicable to the financial statements for both the University and the Foundation required dual reporting on both the University and the Foundation financial statements of the Indenture Assets and related income (loss) arising from changes in the market value of the Indenture Assets.

Recognizing that the Foundation's total endowment portfolio has grown substantially over the past several decades, coupled with both entities' desire to report their annual financial statements in a clear and concise manner, the current senior leadership of both the University and the Foundation decided to take the steps necessary to eliminate the reporting constraints between the two entities caused by the incomplete nature of the transfer under the Indenture Agreement. Accordingly, on February 8, 2013, the University and the Foundation executed a Release and Waiver of Rights and Restrictions Agreement ("**Release**") that permanently eliminated the required dual reporting requirements associated with the Indenture Assets. The Release removed reference to "in trust" as well as the right to revoke or withdraw the Indenture Assets.

The effect of the Release was to remove the reporting of the Indenture Assets from the balance sheet of the University (reducing net assets by the market value of the Indenture Assets) and removing the corresponding gain (loss) arising from change in the market value of the Indenture Assets from the University income statement. There was a one-time, non-operating expense of \$80,990,338 to the University in the amount of the fair market value of the Indenture Asset as of the date of transfer, February 8, 2013. The Foundation financial statements show an increase in net assets by the market value of the Indenture Assets, and fully show the corresponding gain (loss) arising from change in the market value of the Indenture Assets subsequent to the transfer date. The Foundation statements show a corresponding one-time, non-operating gain of \$80,990,338 in the amount of the fair market value of the Indenture Assets as of the date of transfer, February 8, 2013.

While the Release brings about a change in accounting and financial statement reporting, the Foundation will continue to manage the Indenture Assets in the same fashion as it has since the original transfer in 1974. There will be no change in the transfer of income earned by the Indenture Assets from the Foundation to the University, and the University remains the sole beneficiary of the Indenture Assets.

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## UNIVERSITY GOVERNANCE AND ADMINISTRATION

The responsibility for overall management and determination of University policy and standards is vested with the Regents of the University of Idaho who also serve as the SBOE and simultaneously, among other duties, the Trustees for Boise State University, Idaho State University in Pocatello and Lewis-Clark State College in Lewiston and as the State Board for Professional – Technical Education. The combined boards are appointed by the Governor for five-year terms. The membership, terms, residences and occupations are listed below.

### The Board of Regents of the University and The State Board of Education

Name	Residence	Occupation	Term Expires (June 30)
Emma Atchley (President)	Ashton	Board of Directors member for the Bank of Idaho, Teton Regional Land Trust, Flying A Ranch Inc., Cea Corp., and Ashton Hi-Tech Seed Co.	2015
Roderic W. Lewis (Vice President)	Boise	Retired, Vice President of Legal Affairs, General Counsel and Corporate Secretary for Micron Technology, Inc. of Boise	2015
Don Soltman (Secretary)	Twin Lakes	Retired, Served four years on the State of Idaho's Professional Standards Commission. Also served on the state committee that developed the graduation standards in science for Idaho students.	2019
Debbie Critchfield	Oakley	Cassia County Republican Central Committee member and an active community education leader.	2018
Bill Goesling	Moscow	Retired, Served 24 years of active duty with the United States Navy.	2016
David Hill	Boise	Chairman of the Idaho Global Entrepreneurial Mission (IGEM) Council, a member of the Higher Education Research Council (HERC) and the EPSCoR committee.	2018
Tom Luna <sup>(1)</sup>	Boise	State Superintendent of Public Instruction	<sup>(1)</sup>
Richard Westerberg	Preston	Retired, PacifiCorp	2019

<sup>(1)</sup> Mr. Luna serves ex-officio to the SBOE in his capacity as State Superintendent of Public Instruction, which is a statewide elective office. [Mr. Luna will serve through January 5, 2015.]

The SBOE has a full-time professional staff headed by Mike Rush, Executive Director. His appointment became effective May 2008.

## University Officers

The affairs of the University are managed by the President of the University and the staff. The President is appointed by, reports to, and serves at the pleasure of the Regents. Following is a brief biographical resume of President Staben and his executive staff at a Vice President level:

*Chuck Staben, **President***, took office as the 18th president of the University Idaho March 1, 2014. Dr. Staben served as Provost and Vice President for Academic Affairs at the University of South Dakota from August 2008 to February 2014. Prior to his service at South Dakota, he served as the Associate Vice President for Research at the University of Kentucky from 2005 to 2009 and was a professor of biology from 1989 to 2008. Previously Dr. Staben was a postdoctoral researcher at Stanford University from 1987 to 1989 and at Chiron Research Laboratories from 1985 to 1986. He has served on National Science Foundation and National Institutes of Health grant review panels and recently served on a National Research Council committee that reviewed the Experimental Program to Stimulate Competitive Research and the Institutional Development Award programs for the U.S. Senate. Dr. Staben received a B.S. degree from the University of Illinois, Champaign-Urbana, and a Ph.D. in Biochemistry from the University of California, Berkeley.

*Katherine G. Aiken, **Interim Provost and Executive Vice President***, served as the Dean of the College of Letters, Arts, and Social Sciences beginning in 2006 and has worked at the University of Idaho for 25 years. Dr. Aiken is a professor of history and currently serves on the Idaho State Board of Education's Professional Standards Commission and as chair for the Idaho Humanities Council. Dr. Aiken has won 15 teaching awards including the University of Idaho Award for Teaching Excellence, and has been named the ATHENA Woman of the Year. Dr. Aiken was the recipient of Boise State University's Women Making History Award and the Virginia Woolf Distinguished Service Award from the University of Idaho Women's Center. Dr. Aiken has also served as an Associate Dean and Director of Extended Learning at Lewis-Clark State College, Chair of History at University of Idaho and Associate Dean for both the University of Idaho College of Graduate Studies and the College of Letters, Arts and Social Sciences. Dr. Aiken received a Bachelor's degree in history from the University of Idaho, her Master's degree in history from the University of Oregon and her Doctoral degree from Washington State University.

*Ronald Smith, **Vice President for Finance and Administration and Bursar***, assumed his position at the University of Idaho in July 2011. Dr. Smith was previously the vice president for finance and business affairs at Seattle University. Prior to his tenure in Seattle, Washington, he served as vice president for administrative services for Lewis-Clark State College in Lewiston, Idaho. He also served in several capacities at the University of Idaho for eight years in the late 1980s and early 1990s. A native of Bozeman, Montana, Dr. Smith earned a bachelor of science degree in commerce and accounting from Montana State University; master's degree in business administration from the University of Montana; and a doctorate in higher education administration from the University of Idaho.

*John (Jack) K. McIver, **Vice President of Research and Economic Development***, assumed his position at the University in June 2008. Dr. McIver received his B.S. degree in Mechanical Engineering and Physics at the University of Rochester in 1971, his Masters of Science from the College of Engineering and Applied Sciences at the University of Rochester in 1972, and his Doctorate from the College of Engineering and Applied Sciences at the University of Rochester in 1979. He currently oversees, coordinates and facilitates all University research activities, including sponsored and internally funded research, center and institute research, interdisciplinary research programs, and research related to the University's land grant mission. He has responsibility for all policies and procedures relating to research, technology transfer, economic development, and regulatory compliance and works closely with the faculty to catalyze, encourage, and support research and scholarly activities. Dr. McIver also has

management responsibility for the University of Idaho Office of Research and Economic Development, which includes the Office of Sponsored Programs, the Office of Research Assurances, the University institutes, and the Office of Technology Transfer. He is the principal point of contact for the University in all research related matters and represents the regional, national, and international research interests of the University to major research funding agencies and foundations, to regional and national research consortia, to national laboratories, to federal and state agencies, and to the private sector.

*Kent E. Nelson*, was appointed as **University Counsel** to the University on September 17, 2006. Prior to his appointment he served from June 1998 to September 2006 as the Senior Deputy Attorney General in the Contracts and Administrative Law Division of the Idaho Attorney General, where he served as special projects counsel to the Idaho Board of Land Commissioners and as general counsel to various state agencies including the State Board of Education and Board of Regents of the University of Idaho. From September 1984 to June 1998 he was in general civil practice in Boise, Idaho with emphasis in real estate, transactions, creditors rights and civil litigation. Mr. Nelson received a bachelor's degree in accounting from the University of Idaho in 1980 and a Juris Doctor in law from the University of Idaho College of Law in 1984.

The position of **Vice President for University Advancement** is presently vacant. A chair for the hiring process has been appointed and a search is underway.

## TAX MATTERS

### The Series 2015A Bonds

#### *Federal Income Tax*

In the opinion of Skinner Fawcett, LLP and Ballard Spahr LLP, as Co-Bond Counsel to the Regents, interest on the Series 2015A Bonds is excludable from gross income for purposes of federal income tax under existing laws as enacted and construed on the date of initial delivery of the Series 2015A Bonds, assuming the accuracy of the certifications of the Regents and continuing compliance by the Regents with the requirements of the Internal Revenue Code of 1986. Interest on the Series 2015A Bonds is not an item of tax preference for purposes of either individual or corporate federal alternative minimum tax ("**AMT**"); however, interest on Series 2015A Bonds held by a corporation (other than an S corporation, regulated investment company, or real estate investment trust) may be indirectly subject to federal AMT because of its inclusion in the adjusted current earnings of a corporate holder.

#### *Original Issue Premium*

Certain of the Series 2015A Bonds may be offered at a premium ("**original issue premium**") over their principal amount. For federal income tax purposes, original issue premium is amortizable periodically over the term of such Series 2015A Bond through reductions in the holder's tax basis for such Series 2015A Bond for determining taxable gain or loss from sale or from redemption prior to maturity. Amortization of premium does not create a deductible expense or loss. Holders should consult their tax advisors for an explanation of the amortization rules.

#### *Original Issue Discount*

Certain of the Series 2015A Bonds may be offered at a discount ("**original issue discount**") equal generally to the difference between public offering price and principal amount. Original issue discount on a Series 2015A Bond accrues as tax-exempt interest periodically over the term of the Series 2015A Bond.

The accrual of original issue discount increases the holder's tax basis in the Series 2015A Bond for determining taxable gain or loss from sale or from redemption prior to maturity. Series 2015A Bondholders should consult their tax advisors for an explanation of the accrual rules.

*State of Idaho Income Tax*

Co-Bond Counsel is also of the opinion that interest on the Series 2015A Bonds is exempt from State of Idaho personal income taxes.

**No Further Opinion**

Co-Bond Counsel expresses no opinion regarding any other tax consequences relating to ownership or disposition of, or the accrual or receipt of interest on, the Series 2015A Bonds.

**Changes in Federal and State Tax Laws**

From time to time, there are Presidential proposals, proposals of various federal committees, and legislative proposals in the Congress and in the states that, if enacted, could alter or amend the federal and state tax matters referred to herein or adversely affect the marketability or market value of the Series 2015A Bonds or otherwise prevent holders of the Series 2015A Bonds from realizing the full benefit of the tax exemption of interest on the Series 2015A Bonds. Further, such proposals may impact the marketability or market value of the Series 2015A Bonds simply by being proposed. It cannot be predicted whether or in what form any such proposal might be enacted or whether if enacted it would apply to Series 2015A Bonds issued prior to enactment. In addition, regulatory actions are from time to time announced or proposed and litigation is threatened or commenced which, if implemented or concluded in a particular manner, could adversely affect the market value, marketability or tax status of the Series 2015A Bonds. It cannot be predicted whether any such regulatory action will be implemented, how any particular litigation or judicial action will be resolved, or whether the Series 2015A Bonds would be impacted thereby.

Purchasers of the Series 2015A Bonds should consult their tax advisors regarding any pending or proposed legislation, regulatory initiatives or litigation. The opinions expressed by Bond Counsel are based upon existing legislation and regulations as interpreted by relevant judicial and regulatory authorities as of the date of issuance and delivery of the Series 2015A Bonds, and Bond Counsel has expressed no opinion as of any date subsequent thereto or with respect to any proposed or pending legislation, regulatory initiatives or litigation.

**UNDERWRITING**

The Series 2015A Bonds are being purchased by George K. Baum & Company, acting as the Underwriter. The Bond Purchase Agreement relating to the Series 2015A Bonds, entered into between the Underwriter and the Regents, provides that the Underwriter will purchase the Series 2015A Bonds at an aggregate purchase price of \$\_\_\_\_\_ representing (i) the \$\_\_\_\_\_ aggregate par amount of the Series 2015A Bonds, plus (ii) net original issue premium of \$\_\_\_\_\_, and minus (iii) Underwriter's discount of \$\_\_\_\_\_. After initial public offering, the public offering prices may vary from time to time. Under the Bond Purchase Agreement, the Underwriter is obligated to purchase all of the Series 2015A Bonds if any are purchased. The Underwriter reserves the right to join with dealers and other underwriters in offering the Series 2015A Bonds to the public.



The Underwriter and its affiliates are full service financial institutions engaged in various activities, which may include sales and trading, commercial and investment banking, advisory, investment management, investment research, principal investment, hedging, market making, brokerage and other financial and non-financial activities and services. The Underwriter and its affiliates have provided, and may in the future provide, a variety of these services to the University, for which they received or will receive customary fees and expenses.

In the ordinary course of its various business activities, the Underwriter and its affiliates, officers, directors and employees may purchase, sell or hold a broad array of investments and actively trade securities, derivative, loans, currencies and other financial instruments for its own account and for the accounts of its customers, and such investment and trading activities may involve or relate to assets, securities and/or instruments of the University (directly, as collateral securing other obligations and otherwise) and/or persons and entities with relationships with University. The Underwriter and its affiliates may also communicate independent investment recommendations, market color or trading ideas and/or public or express independent research views in respect of such assets, securities or instruments and may at any time hold, or recommend to clients that it should acquire, long and/or short positions in such assets, securities and instrument.

The Underwriter may offer and sell the Series 2015A Bonds to certain dealers (including dealers depositing the Series 2015A Bonds in investment trusts) and others at prices lower than the offering prices stated on the cover page of this Official Statement. The initial public offering prices stated on the inside cover page may be changed from time to time by the Underwriter.

## RATINGS

Moody's Investors Service, Inc. ("**Moody's**") and Standard & Poor's Ratings Services ("**S&P**") have assigned underlying ratings of "\_\_\_" and "\_\_\_," respectively, to the Series 2015A Bonds. The ratings reflect only the views of the rating agencies, and an explanation of the significance of the ratings may be obtained from the rating agencies. There is no assurance that such ratings will continue for any given period of time or that the ratings may not be revised, suspended or withdrawn entirely if, in the judgment of the rating agencies, circumstances so warrant. Any downward revision, suspension or withdrawal of such ratings will be likely to have an adverse effect on the market price or marketability of the Series 2015A Bonds. The Regents, the University and the Underwriter have undertaken no responsibility to oppose any such revision, suspension or withdrawal.

## CONTINUING DISCLOSURE

### **The Series 2015A Bonds**

Upon delivery of the Series 2015A Bonds, the Regents and the Trustee are entering into a "Continuing Disclosure Agreement" pursuant to which the Regents will provide to the Trustee within 180 days following the end of its Fiscal Year, commencing with the Fiscal Year ended June 30, 2015, a copy of the University's annual audited financial statements and such other specified financial information and operating data for such Fiscal Year in form and scope similar to the financial information and operating data included in this Official Statement. The Regents will also agree to deliver to the Trustee notice of certain events described in Rule 15c2-12 as promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended (the "**Rule**"). The Trustee will agree to deliver the information and the notices described in the preceding two sentences upon receipt thereof from the

Regents to the Municipal Securities Rulemaking Board's (the "**MSRB**") Electronic Municipal Market Access system pursuant to the Rule. The Trustee will also agree that if it has knowledge that the Regents have not delivered the University's annual audited financial statements or have not provided the financial information and operating data as described above it will directly notify the MSRB of the Regents' failure to deliver such information. A failure by the Regents to comply with the Continuing Disclosure Agreement does not constitute an event of default under the Resolution and the sole remedy of the Bondholders (including any Beneficial Owner) in the event of any failure of the Regents to comply with the Continuing Disclosure Agreement is an action for specific performance.

### **Compliance by Regents with Other Continuing Disclosure Undertakings**

Except as described in this paragraph and the following paragraph, the Regents have not failed in the past five Fiscal Years to perform any obligation with respect to any existing undertaking to provide continuing disclosure under the Rule. The University filed its audited financial statements for Fiscal Years 2009-2011 and 2013 on a timely basis in accordance with its existing undertakings. On February 6, 2013, the Trustee filed with the MSRB a notice of a failure to timely file the audited financial statements and annual financial information for Fiscal Year 2012 as required by the existing undertakings of the Regents. On February 18, 2013, such Fiscal Year 2012 audited financial statements were filed with the MSRB. The University had previously publically posted the Fiscal Year 2012 audited financial statements on its website on December 13, 2012. This failure and the University's remedial action was disclosed in the Regents' Official Statement dated April 26, 2013 relating to the Series 2013A Bonds and Series 2013B Bonds.

In 2014, the University determined that certain of the annual financial information and operating data to be provided under its existing undertakings has not been fully updated as part of the annual filings of the audited financial statements. The following statement is consistent with previous disclosure about this failure. Specifically, the University is required under its existing undertakings to annually update the financial information and operating data set forth under the captions of its official statements entitled "Historical Pledged Revenues," "Tuition and Student Fees," "Sales and Services Revenues," "Facilities and Administrative Recovery Revenues," "Other Operating Revenues," "Investment Income," "Housing and Student Union Facilities," "Employee Retirement Plan; Post Retirement Health Benefits," "Insurance," "State Appropriations," "Financial Assistance," "Schedule of Outstanding Indebtedness," "Five-Year Historical Enrollment Summary" and "Tuition and Student Fees" (Appendix B in certain prior official statements). While much of this financial information and operating data has been included in the University's audited financial statements filed with the MSRB, certain other information and data was made available only in a summary format in such audited financial statements or was included on the University's Institutional Research Department website but not by means of a required annual financial information report filed with the MSRB.

The University also failed to file notices with the MSRB in connection with the following rating changes. On May 7, 2010, Moody's changed its rating on the University's Bonds from "A1" to "Aa3." On October 25, 2010, S&P downgraded the rating of Assured Guaranty Municipal Corp. ("Assured Guaranty") (formerly Financial Security Assurance Inc.) from "AAA" to "AA+." The University filed a notice regarding the S&P downgrade of Assured Guaranty's rating from "AA+" to "AA-" on November 30, 2011. On March 18, 2014, S&P upgraded Assured Guaranty to "AA." The University's Series 2003 Bonds and Series 2007 Bonds were insured by Assured Guaranty. On October 6, 2011, S&P downgraded the short-term rating of Dexia Credit Local ("Dexia") to "A-2" and on December 15, 2011, Moody's downgraded the short-term rating of Dexia to "P-2." Dexia provides a standby bond purchase agreement with respect to the University's Series 2007B Bonds.

The University has filed a notice with the MSRB of its failure to file such required information and provide such rating change notices, and has filed a notice of rating changes and a financial information report including all such required annual financial information and operating data for Fiscal Years 2009 through 2013. The University has agreed to establish appropriate policies and procedures and conduct training regarding its continuing disclosure obligations promptly following delivery of the Series 2015A Bonds. **[Update for MCDC]**

A failure by the Regents to comply with the Continuing Disclosure Agreements must be reported in accordance with the Rule and must be considered by any broker, dealer or municipal securities dealer before recommending the purchase or sale of the Series 2015A Bonds in the secondary market. Consequently, such a failure may adversely affect the transferability and liquidity of the Series 2015A Bonds and their market price.

### LITIGATION

The Regents have reported as of the date hereof that there is no litigation pending or threatened that, if decided adversely to the interests of the Regents or the University, would have a materially adverse effect on the operations or financial position of the Regents or the University. As of the date hereof, there is no litigation of any nature now pending or threatened restraining or enjoining the issuance, sale, execution or delivery of the Series 2015A Bonds or in any way contesting or affecting the validity of, or having a material adverse effect on, the Series 2015A Bonds, the pledge and application of Pledged Revenues or the existence or powers of the Regents or the University.

### LEGAL MATTERS

All legal matters incident to the authorization and issuance of the Series 2015A Bonds are subject to the approval of Skinner Fawcett LLP, Boise, Idaho, and Ballard Spahr LLP, Salt Lake City, Utah, as Co-Bond Counsel to the Regents, whose Approving Opinions will be delivered with the Series 2015A Bonds and the form of which are attached as **Appendix F** to this Official Statement. Certain legal matters will be passed upon for the Regents and the University by the University's Counsel, Kent E. Nelson, Esq., Moscow, Idaho and for the Underwriter by Hogan Lovells US LLP, Denver, Colorado.

### MUNICIPAL ADVISOR

The Regents have retained Piper Jaffray & Co. as its municipal advisor (the "**Municipal Advisor**") in connection with the issuance of the Series 2015A Bonds. The Municipal Advisor has not been engaged to undertake, and has not undertaken to make, an independent verification or to assume responsibility for the accuracy, completeness, or fairness of the information contained in this Official Statement. The Municipal Advisor will act as an independent advisory firm and may not acquire any portion of the Series 2015A Bonds from the issuer as principal or as a syndicate member.

**INDEPENDENT AUDITORS**

The audited financial statements of the University as of and for the Fiscal Years ended June 30, 2014 and June 30, 2013, included in this Official Statement as **Appendix A**, have been audited by Moss Adams LLP, independent auditors, except that the financial statements of the University's discretely presented component unit as described in Note 18 to the University's audited financial statements, and the University of Idaho Health Benefits Trust as described in Note 11 to the University's audited financial statements, were audited by other auditors, as stated in their report appearing therein. These financial statements are the most recent audited financial statements of the University.

Moss Adams LLP has not been engaged to perform and has not performed, since the date of its report, any procedures on the audited financial statements addressed in the report. Moss Adams LLP has not performed any procedures relating to this Official Statement, and has not consented to the use of the audited financial statements of the University in this Official Statement.

**MISCELLANEOUS**

This Official Statement, and its distribution and use by the Underwriter, have been duly authorized and approved by the Regents.

**Appendices A and C** through **F** are an integral part of this Official Statement and must be read together with all other parts of this Official Statement.

**THE REGENTS OF THE UNIVERSITY OF IDAHO**

By: \_\_\_\_\_  
Vice President for Finance and  
Administration and Bursar

**APPENDIX A**

**Audited Financial Statements of the University  
for the Years ended June 30, 2014 and June 30, 2013**

**APPENDIX B**

**RESERVED**

## APPENDIX C

## Glossary of Certain Terms Used in the Resolution

Except as otherwise expressly provided in the Resolution, as supplemented by Supplemental Resolutions, including the 2015A Supplemental Resolution, or unless the context otherwise requires, the following terms shall have the following meanings (references herein to the "University" shall be deemed to refer to the Regents or other appropriate authority thereof pursuant to the Act and other applicable laws):

Act shall mean the Educational Institutions Act of 1935, codified in Title 33, Chapter 38, Idaho Code, as the same shall be amended from time to time.

Activity Fees means such fees designated and set from time to time by the Regents or the University, imposed upon each full-time and part-time on-campus student in attendance at the University for activities at the University. Currently such fees include: ASUI general, alumni association fee, campus card, cheerleader program, college dedicated fee, Commons/Union operations, fine arts, intercollegiate athletics, intramural/locker/recreational services, Kibbie Center operations (stadium), marching band, minority student program, sales tax, student advisory services, student recreation center operations, student benefits, health and wellness, and student health services.

Additional Bonds means any bonds which the Regents may issue pursuant to Article VII of the Resolution secured by all or a portion of the Pledged Revenues, as may be amended from time to time.

Amendments means, collectively, the 2005 Amendments, the 2007 Amendments, the 2010 Amendments and the 2013 Amendments.

Approving Opinion means an Opinion of Counsel to the effect that an action being taken is authorized by the applicable provisions of the Resolution and will not adversely affect the tax-exempt status of interest on the Tax-Exempt Bonds or the status of the Series 2010B Bonds as Build America Bonds.

Authorized Denomination means \$5,000 or any integral multiple thereof.

Authorized Officer of the University shall mean the Bursar or a representative designated by the Bursar.

Auxiliary Enterprises shall mean all facilities of the University generating Sales and Services Revenues, including the Housing System, Parking System, Non-Residential Food Service System, Bookstore, and recreational and event facilities.

Beneficial Owner(s) shall mean the owners of Bonds and any Additional Bonds issued pursuant to the Resolution, whose ownership is recorded under the Book-Entry-Only System maintained by the Securities Depository as described in the Resolution.

Bond Fund shall mean the fund created by the Resolution, consisting of the Debt Service Account.

Bond Purchase Agreement means the Bond Purchase Agreement dated January \_\_, 2015, between the Regents and the Underwriter pursuant to which the Series 2015A Bonds are sold.



Bond Register shall mean the registration records of the Regents, maintained by the Trustee, on which shall appear the names and addresses of the Registered Owners of the Bonds and any Additional Bonds.

Bond Resolution or Resolution shall mean the Bond Resolution adopted by the Regents on November 22, 1991, providing for the issuance of General Revenue Bonds, as from time to time amended and supplemented by the Supplemental Resolutions.

Bond Year means the one-year period (or, in the case of the first Bond Year, the shorter period from the date of issue of the Bonds) selected by the University. If no date is selected by the University within five years of the date of delivery of a series of Bonds, each Bond Year shall end at the close of business on the date preceding the anniversary of the date of delivery of a series of Bonds.

Bonds shall mean, collectively, the Bonds issued pursuant to the Resolution and Additional Bonds issued pursuant to any Supplemental Resolutions.

Book-Entry System shall mean the book-entry system of registration of the Bonds and any Additional Bonds as described in the Resolution.

Build America Bonds means the interest subsidy bonds issuable by the University under Sections 54AA and 6431 of the Code and a qualified bond under Section 54AA(g)(2) of the Code or such other tax credit bonds of substantially similar nature which may be hereafter authorized.

Bookstore means the University's bookstore facilities located on the Moscow campus, in which books, supplies and merchandise are sold.

Bursar means the officer so designated by the University as chief financial officer of the University, currently the Vice President of Finance and Administration, including any acting Bursar designated by the University.

Business Day means, with respect to the Series 2015A Bonds, a day, other than Saturday or Sunday on which banks located in the State of Idaho or in the city where the principal corporate trust office of the Trustee is located are open for the purpose of conducting commercial banking business.

Cede & Co. shall mean Cede & Co., as nominee of DTC.

Code shall mean the Internal Revenue Code of 1986, as amended and supplemented from time to time, and the regulations promulgated thereunder.

Construction Fund shall mean the special account created by the Resolution, from which the Costs of Acquisition and Construction of a Project shall be paid.

Continuing Disclosure Agreement means the Continuing Disclosure Agreement between the Regents and the Trustee as Dissemination Agent with respect to the Series 2015A Bonds.

Cost(s) of Issuance shall mean printing, Rating Agency fees, legal fees, underwriting fees, fees and expenses of the Trustee, bond insurance premiums, if any, and all other fees, charges, and expenses with respect to or incurred in connection with the issuance, sale, and delivery of a series of Bonds.

Debt Service for any period shall mean, as of any date of calculation, an amount equal to the Principal Installment and interest accruing during such period on the Bonds, plus any Payment due under

a Parity Payment Agreement. Such Debt Service on the Bonds shall be calculated on the assumption that no portion of the Bonds Outstanding at the date of calculation will cease to be Outstanding except by reason of the payment of the Principal Installment on the Bonds on the due date thereof. For any Series of Variable Rate Bonds bearing interest at a variable rate which cannot be ascertained for any particular Fiscal Year, it shall be assumed that such Series of Variable Rate Bonds will bear interest at a fixed rate equal to the higher of (i) the average of the variable rates applicable to such Series of Variable Rate Bonds during any twenty-four month period ending within thirty (30) days prior to the date of computation, or (ii) 110% of the Bond Buyer 25 Revenue Bond Index most recently published prior to the computation date but bearing interest at a fixed rate. There shall be excluded from "Debt Service" (i) interest on Bonds (whether Cross-over Refunding Bonds or Cross-over Refunded Bonds) to the extent that Escrowed Interest is available to pay such interest, and (ii) principal on Cross-over Refunded Bonds to the extent that the proceeds of Cross-over Refunding Bonds are on deposit in an irrevocable escrow in satisfaction of the requirements of Section 57-504, Idaho Code, and such proceeds or the earnings thereon are required to be applied to pay such principal (subject to the possible use to pay the principal of the Cross-over Refunding Bonds under certain circumstances) and such amounts so required to be applied are sufficient to pay such principal.

Debt Service Account shall mean the account of that name created within the Bond Fund by the Resolution.

Direct Obligations means noncallable Government Obligations.

Direct Payments means the interest subsidy payments received by the University from the United States Treasury pursuant to Section 6431 of the Code or other similar programs with respect to Series 2010C Bonds issued under the Resolution.

DTC means The Depository Trust Company, New York, New York.

DTC Participants shall mean those financial institutions for whom the Securities Depository effects book-entry transfers and pledges of securities deposited with the Securities Depository, as such listing of Participants exists at the time of such reference.

Educational Activities Revenues shall mean revenues generated incidentally to the conduct of instruction, research and public service activities, such as unrestricted revenues generated by the University's testing and training services, labs, sales of scientific materials, sales of miscellaneous services and products, and agriculture and forest products.

Electronic Notice means notice through telecopy, telegraph, telex, facsimile transmission, internet, e-mail or other electronic means of communication.

Escrow Agent means Wells Fargo Bank, N.A.

Escrow Agreement means the agreement between the University and the Escrow Agent, dated the date of delivery of the Series 2015A Bonds.

Estimated Pledged Revenues means, for any year, the estimated Pledged Revenues for such year, based upon estimates prepared by the Bursar and approved in accordance with procedures established by the Regents. In computing Estimated Pledged Revenues, Pledged Revenues may be adjusted as necessary to reflect any changed schedule of fees or other charges adopted and to become effective not later than the next succeeding Fiscal Year of the University and any estimated gain in enrollments of students subject to payment of fees in the academic year next succeeding the delivery of a series of bonds in connection with

which an estimate is made. In estimating Operation and Maintenance Expenses, recognition shall be given to any other revenues which may be designated by the Regents and to any anticipated change in the Operation and Maintenance Expenses. Amounts reasonably anticipated to be paid from sources other than Pledged Revenues may be excluded from the estimated Operation and Maintenance Expenses.

Event of Default shall mean one or more of the events enumerated in the Resolution and described here in **Appendix D** – "Events of Default and Remedies of Registered Owners."

F&A Recovery Revenues shall mean the revenues received by the University as reimbursement for facility and administrative costs in conjunction with grants and contracts for research activities conducted by the University.

Facility Fees shall mean such fees designated and set from time to time by the Regents and the University, imposed upon each full-time and part-time on-campus student in attendance at the University for facilities at the University. In the Resolution, the Facility Fees are defined to include certain Activity Center Complex Fees, Student Building Fees, Residential Campus Development Fees and Recreation Center Fees. These fees have now been subsumed into a single Facility Fee imposed on University students without breakout into the separate fees.

Fiscal Year shall mean the annual accounting period of the University, beginning July 1 in a year and ending June 30 of the following year.

Fitch means Fitch Ratings, its successors and their assigns, and, if such entity shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Fitch" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Regents, with notice to the Trustee.

General Account Appropriated Funds shall mean general account appropriated funds of the State of Idaho which in accordance with governmental accounting standards and the University's audited financial statements are treated as non-operating revenues and accordingly such revenues are not included in the definition of Other Operating Revenues for purposes of generating Pledged Revenues under the Resolution, and in any event are excluded from Pledged Revenues.

General Revenue Bond System means the single revenue bond system created under the Resolution under which the Series 2015A Bonds are issued and Additional Bonds may be issued.

Generally Accepted Accounting Principles shall mean those accounting principles applicable in the preparation of financial statements of business corporations as promulgated by the Financial Accounting Standards Board or such other body recognized as authoritative by the American Institute of Certified Public Accountants.

Government Obligations means solely one or more of the following:

- (a) State and Local Government Series issued by the United States Treasury ("SLGS");
- (b) United States Treasury bills, notes and bonds, as traded on the open market;
- (c) Zero Coupon United States Treasury Bonds; and

(d) Any other direct obligations of or obligations unconditionally guaranteed by, the United States of America (including, without limitation, obligations commonly referred to as "**REFCORP strips**").

Housing System shall mean the University's system of (i) on campus, student group housing facilities and related facilities, including family student housing; and (ii) the Residence Hall System.

Investment Income shall include investment earnings on all unrestricted University funds and accounts.

Investment Securities shall mean and include any securities authorized to be acquired by the Treasurer of the State of Idaho pursuant to Section 67-1210 and 67-1210A, Idaho Code, or any successor Code section specifying legal investments.

Issue Date means, with respect to any Series 2015A Bonds, the date on which such Series 2015A Bonds are first delivered to the purchasers thereof.

Mandatory Redemption Amount(s) shall mean the mandatory deposits established for any Bonds as designated in a Supplemental Resolution. The portion of any Mandatory Redemption Amount remaining after the deduction of any amounts credited pursuant to the Resolution (or the original amount of any such Mandatory Redemption Amount if no such amounts shall have been credited toward the same) shall constitute the unsatisfied balance of such Mandatory Redemption Amount for the purpose of calculation of Mandatory Redemption Amounts due on a future date.

Maximum Annual Debt Service shall mean an amount equal to the greatest annual Debt Service with respect to the Bonds for the current or any future Bond Year.

Moody's means Moody's Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and assigns and, if such entity shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency (other than S&P or Fitch) designated by the Regents, with notice to the Trustee.

Net Proceeds, when used with reference to any series of Bonds, shall mean the aggregate principal amount of the series of Bonds, less the Costs of Issuance.

Nominee means Cede & Co., as nominee of DTC, the initial Securities Depository for the Series 2015A Bonds, and any successor nominee of DTC and, if another Securities Depository replaces DTC as Securities Depository hereunder, any nominee of such substitute Securities Depository.

Non-Residential Food Service System means the University's system of providing food services for the University's students, faculty, staff, employees and invited guests at all University facilities on the Moscow campus, excluding board charges for food service in the University's Residence Hall System.

Notice by Mail or notice of any action or condition "by Mail" means a written notice meeting the requirements of the Supplement Resolution mailed by first class mail, postage prepaid.

Opinion of Counsel means a written opinion of counsel satisfactory to the Regents and not objected to by the Trustee with respect to the Series 2015A Bonds.

Other Fees shall consist of the graduate/professional fee, law college dedicated fee, the architecture school dedicated fee, non-resident fee, the in service teacher education fee, and the western undergraduate education fee, general education fees for part-time and summer students which are currently designated by the Regents as the "Part-time Educational Fee" and "Summer School Fee" and such other fees as the University shall hereafter establish.

Other Operating Revenues shall mean revenues received by the University generated from miscellaneous sources, *i.e.*, fines and rent/lease revenues.

Outstanding, when used with reference to the Bonds, as of any particular date, shall mean the Bonds which have been issued, sold and delivered under the Resolution, except (i) the Bonds (or portion thereof) cancelled because of payment or redemption prior to their stated date of maturity, and (ii) the Bonds (or portion thereof) for the payment or redemption of which there has been separately set aside and held money for the payment thereof.

Parking System shall mean the on-campus parking system at the University campus in Moscow, Idaho.

Payment Date means, with respect to the Series 2015A Bonds, each April 1 and October 1, commencing October 1, 2015.

Pledged Revenues shall include (i) Tuition and Student Fees; (ii) Sales and Services Revenues; (iii) the F&A Recovery Revenues; (iv) Other Operating Revenues; (v) Investment Income; (vi) Direct Payments; (vii) proceeds from the sale of a Series of Bonds and moneys and investment earnings thereon, except as otherwise provided in the Resolution or a Supplemental Resolution; and (viii) such other revenues as the Regents shall designate as Pledged Revenues.

Notwithstanding the definition set forth above and, in particular, notwithstanding clause (viii) in no event shall Pledged Revenues include (i) General Account Appropriated Funds or (ii) Restricted Fund Revenues.

President shall mean the president of the Regents.

Principal Installment shall mean, as of any date of calculation and with respect to any series of Bonds then Outstanding, (A) the principal amount of Bonds of such series due on a certain future date for which no Mandatory Redemption Amounts have been established, or (B) the unsatisfied balance (determined as provided in the definition of Mandatory Redemption Amount in this section) of any Mandatory Redemption Amount due on a certain future date for Bonds of such series, plus the amount of the mandatory redemption premiums, if any, which would be applicable upon redemption of such Bonds on such future date in a principal amount equal to such unsatisfied balance of such Mandatory Redemption Amount, or (C) if such future dates coincide as to different Bonds of such series, the sum of such principal amount of Bonds and of such unsatisfied balance of such Mandatory Redemption Amount due on such future date plus such applicable redemption premiums.

Private Person shall mean any natural person engaged in a trade or business, the United States of America or any agency thereof, or any trust, estate, partnership, association, company or corporation. A state or local governmental unit is not a private person.

Private Person Use shall mean the use of property in a trade or business by a Private Person if such use is other than as a member of the general public. Private Person Use includes ownership of the property by the Private Person as well as other arrangements that transfer to the private Person the actual

or beneficial use of the property (such as a lease, management or incentive payment contract or other special arrangement) in such a manner as to set the Private Person apart from the general public. Use of property as a member of the general public includes attendance by the Private Person at municipal meetings or business rental of property to the Private Person on a day-to-day basis if the rental paid by such Private Person is the same as the rental paid by any Private Person who desires to rent the property. Use of property by nonprofit community groups or community recreational groups is not treated as Private Person Use if such use is incidental to the governmental uses of property, the property is made available for such use by all such community groups on an equal basis and such community groups are charged only a de minimis fee to cover custodial expenses.

Project shall mean any "project" as defined in the Act that is financed with the proceeds of Bonds or Additional Bonds issued under the Resolution.

Project Account shall mean an account established by the Trustee within the Construction Fund for a Project.

Rating Agency means Fitch, S&P, Moody's or any other nationally recognized rating agency, in each case then providing or maintaining a rating on the Series 2015A Bonds at the request of the Regents.

Rebate Fund means the fund by that name established by the Resolution.

Record Date shall mean the 15th day of the calendar month next preceding any interest payment date, as provided in the Resolution.

Regents shall mean the Board of Regents of the University of Idaho.

Registered Owner or Owner(s) shall mean the person or persons in whose name or names the Bonds shall be registered in the Bond Register maintained by the Trustee in accordance with the terms of the Resolution.

Replacement Bonds shall mean the Bonds described as such in the Resolution, and any Additional Bonds issued as Replacement Bonds in accordance therewith.

Residence Hall System means the University's on-campus residence hall housing facilities, including the Wallace Residence Hall and Cafeteria Complex, the McConnell Residence Hall, the Gault-Upham Residence Hall and the Theophilus Tower Residence Hall, and food service and dining facilities and related and subordinate facilities.

Restricted Fund Revenues shall mean all revenues that the University is obligated to spend in accordance with restrictions imposed by external third parties, such as revenues from grants, contracts, gifts and scholarships.

Revenue Fund shall mean the Revenue Fund established by the Resolution.

S&P means Standard & Poor's Ratings Services, its successors and their assigns, and, if such entity shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "S&P" shall be deemed to refer to any other nationally recognized securities rating agency (other than Fitch or Moody's) designated by the Regents, with notice to the Trustee.

Sales and Services Revenues shall include all revenues generated through operations of the Auxiliary Enterprises and the Educational Activities Revenues.

Secretary means the secretary of the Regents.

Securities Depository shall mean DTC, or any successor Securities Depository appointed pursuant to the Resolution.

Series 2005A Bonds means the \$30,740,000 original principal amount of General Revenue Refunding Bonds, Series 2005A.

Series 2007B Bonds means the \$35,035,000 original principal amount of Adjustable Rate General Revenue Refunding Bonds, Series 2007B.

Series 2010A Bonds means the \$10,230,000 original principal amount of General Revenue Refunding Bonds, Series 2010A.

Series 2010B Bonds means the \$10,150,000 original principal amount of General Revenue Bonds, Series 2010B.

Series 2010C Bonds means the \$13,145,000 original principal amount of Taxable General Revenue Bonds, Series 2010C.

Series 2011 Bonds means the \$60,765,000 original principal amount of Adjustable Rate General Revenue Refunding Bonds, Series 2011.

Series 2013A Bonds means the \$8,475,000 original principal amount of General Revenue and Refunding Bonds, Series 2013A.

Series 2015A Bondholder, Holder and Bondholder means the holder of any Series 2015A Bond.

Series 2015A Bonds means the General Revenue Refunding Bonds, Series 2015A.

Series 2015A Costs of Issuance shall mean the Costs of Issuance incurred in connection with the issuance, sale and delivery of the Series 2015A Bonds.

Series 2015A Costs of Issuance Fund shall mean the fund established pursuant to the 2015A Supplemental Resolution into which shall be deposited the portion of the proceeds of the Series 2015A Bonds necessary to pay the Series 2015A Costs of Issuance, as further provided in the 2015A Supplemental Resolution.

Student Fees shall consist of Tuition Fees, Activity Fees, Facility Fees, the Technology Fee, and Other Fees.

Supplemental Resolution means any resolution amending or supplementing the terms of the Resolution in full force and effect which has been duly adopted and approved by the University under the Act; but only if and to the extent that such Supplemental Resolution is adopted in accordance with the provisions of the Resolution.

Tax Compliance Policies means the tax compliance policies relating to tax-exempt governmental bonds previously adopted by the Regents.

Taxable Series 2013B Bonds means the \$6,325,000 original principal amount of Taxable General Revenue Bonds, Series 2013B.

Technology Fee shall include the Student Computing and Network Access Fee to support the University's technological operations, as assessed against full-time and part-time students at the University and as said fees now exist and may hereafter be revised by the Regents or the University.

Terms Certificate means one or more certificates of the Regents signed by the Bursar or authorized designee in substantially the form attached to the 2015A Supplemental Resolution, specifying certain terms of the Series 2015A Bonds.

Trustee shall mean Wells Fargo Bank, N.A., Boise, Idaho, which shall also act as bond registrar, authenticating agent, paying agent and transfer agent with respect to the Series 2015A Bonds, or its successors in functions, as now or hereafter designated.

Tuition and Student Fees shall consist of the Tuition Fee, the Activity Fees, the Facility Fees, the Technology Fee, and Other Fees.

Tuition Fee(s) shall mean the student tuition established by the Regents. Tuition fees are defined as the fees charged for any and all educational costs at University. Tuition fees include, but are not limited to, costs associated with academic services; instruction; the construction, maintenance, and operation of buildings and facilities; student services; or institutional support.

2005 Amendments means amendments to the Resolution as described in the 2005A Supplemental Resolution.

2005A Supplemental Resolution means the Supplemental Resolution of the Regents adopted on January 24, 2005.

2007 Amendments means amendments to the Resolution as described in the 2007 Supplemental Resolution.

2007 Supplemental Resolution means the Supplemental Resolution of the Regents adopted on October 11, 2007, authorizing the Series 2007 Bonds and making the 2007 Amendments.

2010 Amendments means amendments to the Resolution as described in the 2010 Supplemental Resolution.

2010 Supplemental Resolution means the Supplemental Resolution of the Regents adopted on February 18, 2010, authorizing the Series 2010A Bonds, the Series 2010B Bonds, the Series 2010C Bonds and the Series 2011 Bonds.

2013 Amendments means amendments to the Resolution as described in the 2013 Supplemental Resolution.

2014A Supplemental Resolution means the Supplemental Resolution of the Regents adopted on June 19, 2014, authorizing the Series 2014A Bonds.

2015A Supplemental Resolution means the Supplemental Resolution of the Regents adopted on December 18, 2014, authorizing the Series 2015A Bonds.

Underwriter shall mean George K. Baum and Company, or its successor in function, as the original purchaser of the Series 2015A Bonds.



University shall mean the University of Idaho, at Moscow, Idaho, a body politic and corporate pursuant to the provisions of Article 9, Section 10, Idaho Constitution and Section 33-2801, Idaho Code.

Written Certificate of the University shall mean an instrument in writing signed on behalf of the University by a duly Authorized Officer thereof. Every Written Certificate of the University, and every certificate or opinion of counsel, consultants, accountants or engineers provided for in the Resolution shall include: (A) a statement that the person making such certificate, request, statement or opinion has read the pertinent provisions of the Resolution to which such certificate, request, statement or opinion relates; (B) a brief statement as to the nature and scope of the examination or investigation upon which the certificate, request, statement or opinion is based; (C) a statement that, in the opinion of such person, he has made such examination or investigation as is necessary to enable him to express an informed opinion with respect to the subject matter referred to in the instrument to which his signature is affixed; and (D) with respect to any statement relating to compliance with any provision hereof, a statement whether or not, in the opinion of such person, such provision has been complied with.

## APPENDIX D

### Summary of the Resolution

The following is a summary of certain provisions of the Resolution as supplemented and amended by Supplemental Resolutions, including the Supplemental Resolution adopted December 18, 2014 (the "**2015A Supplemental Resolution**"), and is not to be considered a full statement thereof. Reference is made to the Resolution and the 2015A Supplemental Resolution. The Resolution and all Supplemental Resolutions are on file at the University, c/o Ronald Smith, Bursar, Administration Building, Room 211, P.O. Box 443168, Moscow, Idaho 83844-3166; or at the office of the Trustee, Wells Fargo Bank, N.A., 877 Main Street, Third Floor, Boise, Idaho 83702. See also "THE SERIES 2015A BONDS" and "SECURITY FOR THE SERIES 2015A BONDS" in the body of the Official Statement.

### GENERAL PROVISIONS RELATING TO THE BONDS

#### Authorization of Bonds

Bonds designated as "General Revenue Bonds" are authorized to be issued by the Regents under the Resolution. The maximum principal amount of the Bonds which may be issued is not limited; provided, however, that the Regents reserve the right to limit or restrict the aggregate principal amount of the Bonds which may at any time be issued or Outstanding under the Resolution. Bonds may be issued in such Series as from time to time shall be established and authorized by the Regents subject to the provisions of the Resolution. The Bonds may be issued in one or more Series pursuant to one or more Supplemental Resolutions. The designation of the Bonds shall include, in addition to the name "General Revenue Bonds," such further appropriate particular designation added to or incorporated in such title for the Bonds of any particular Series as the Regents may determine. Each Bond shall bear upon its face the designation so determined for the Series to which it belongs. Each Bond shall recite in substance that it is payable from and secured by the Pledged Revenues of the University pledged for the payment thereof.

#### Terms of Bonds

The principal of and interest on, and the redemption price of the Bonds shall be payable in lawful money of the United States of America at the principal corporate trust office of the Trustee or of any Paying Agent at the option of a Registered Owner. Payment of interest on any fully registered Bond shall be (i) made to the Registered Owner thereof and shall be paid by check or draft mailed to the Registered Owner thereof as of the close of business on the Record Date at his address as it appears on the registration books of the Trustee or at such other address as is furnished to the Trustee in writing by such Registered Owner, or (ii) with respect to units of \$500,000 or more of Bonds, made by wire transfer to the Registered Owner as of the close of business on the Record Date next preceding the interest payment date if such Registered Owner shall provide written notice to the Trustee not less than fifteen (15) days prior to such interest payment date at such wire transfer address as such Registered Owner shall specify, except, in each case, that, if and to the extent that there shall be a default in the payment of the interest due on any interest payment date, such defaulted interest shall be paid to the Registered Owners in whose name any such Bond is registered at the close of business on the fifth Business Day next preceding the date of payment of such defaulted interest.

The Bonds of any Series may be issued only in fully registered form without coupons in Authorized Denominations.

### Execution of Bonds

The Bonds shall be signed on behalf of the Regents by the manual or facsimile signature of its President, attested by the manual or facsimile signature of its Secretary, and countersigned by the manual or facsimile signature of the Bursar of the University, and the seal of the University shall be thereunto affixed by the Secretary of the Regents, which may be by a facsimile of the University's seal which is imprinted upon the Bonds.

### Transfer or Exchange of Bonds

Any Bond shall be transferable by the Registered Owner thereof in person, or by his attorney duly authorized in writing, upon presentation and surrender of such Bond at the principal corporate trust office of the Trustee for cancellation and issuance of a new Bond registered in the name of the transferee, in exchange therefor; provided, however, the Trustee shall not be required to transfer the Bonds within fifteen (15) calendar days of a principal or interest payment.

### Lost, Stolen, Mutilated or Destroyed Bonds

In case any Bond shall be lost, stolen, mutilated or destroyed, the Trustee may authenticate and deliver a new Bond or Bonds of like date, denomination, interest rate, maturity, number, tenor and effect to the Registered Owner thereof upon the Registered Owner's paying the expenses and charges of the University and the Trustee in connection therewith and upon his filing with the University and the Trustee evidence satisfactory to the University and the Trustee of his ownership thereof, and upon furnishing the University and the Trustee with indemnity satisfactory to the University and the Trustee.

### Registration

In the Resolution, the University adopts a system of registration with respect to the Bonds as required by Title 57, chapter 9, Idaho Code, as amended.

### Book-Entry-Only System

The Series 2015A Bonds shall initially be registered on the Bond Register in the name of Cede & Co., the nominee for the Securities Depository, and no Beneficial Owner will receive certificates representing their respective interests in the Series 2015A Bonds, except in the event the Trustee issues Replacement Bonds as provided in the Resolution.

### Additional Bonds

The University reserves the right to issue Additional Bonds secured equally and ratably with all Bonds issued under the Resolution by a pledge of (i) Pledged Revenues and (ii) the funds established by the Resolution, upon the conditions set forth in Article VII of the Resolution and as described in the Official Statement.

### Investment of Funds

Monies held by the University or the Trustee in funds or accounts under the Resolution shall be invested in Investment Securities.

## PLEDGE OF REVENUES; ESTABLISHMENT OF FUNDS AND ACCOUNTS

### Pledge of Pledged Revenues

In the Resolution, the University pledges for the payment of the Bonds, equally and ratably, the Pledged Revenues. The Pledged Revenues shall not, except as provided in the Resolution, be used for any other purpose while any of the Bonds issued under the Resolution, including the Series 2015A Bonds, remain Outstanding. Except as provided in the Resolution, this pledge shall constitute a first and exclusive lien on the Pledged Revenues for the payment of the Bonds in accordance with the terms of the Resolution.

### Confirmation and Establishment of Funds

The following Funds are established under the Resolution:

- A. Revenue Fund to be held by the University;
- B. Construction Fund to be held by the University;
- C. Bond Fund, consisting of a Debt Service Account to be held by the Trustee;
- D. Cost of Issuance Fund to be held by the University;
- E. Rebate Fund to be held by the University.

The 2015A Supplemental Resolution also creates in the Construction Fund the "Series 2015A Costs of Issuance Account," which account is to be held by the University and approves an Escrow Agreement which establishes the Escrow Account.

The Trustee may establish one or more separate and segregated subaccounts within the Debt Service Account or the Debt Service Reserve Account, if any, from time to time as shall be necessary.

### Revenue Fund; Bond Fund; Flow of Funds

A. Required Deposits. The University shall deposit as received all Pledged Revenues into the Revenue Fund. The University shall deposit into the Debt Service Account in the Bond Fund the accrued interest, if any, received from the sale of a series of Bonds to the initial purchasers thereof. The University shall also deposit into the Debt Service Account the portion, if any, of the Net Proceeds designated as capitalized interest on a series of Bonds.

B. Permitted Deposits. At any time the University may deposit into the Revenue Fund or the Bond Fund such other funds and revenues that do not constitute Pledged Revenues, as the University may in its discretion determine.

C. Required Transfers. Moneys in the Revenue Fund shall be transferred to the Trustee for deposit in the Debt Service Account in the Bond Fund not later than five (5) days before any Payment Date, an amount equal to Debt Service coming due on such Payment Date. There may be credited against the foregoing transfer, however, any moneys deposited in the Debt Service Account which are available to pay Debt Service on the Bonds and which have not previously been taken as a credit against the required transfers. Moneys in the Revenue Fund shall secondarily be transferred to the Trustee for

deposit in the Debt Service Reserve Account in the Bond Fund as soon as practicable after moneys are withdrawn from the Debt Service Reserve Account in accordance with the Resolution.

The Trustee shall pay out of the Debt Service Account to the Registered Owners of the Bonds entitled to such payment on or before each Payment Date the amount of Debt Service payable on such date.

D. Remaining Amounts. Amounts remaining in the Revenue Fund at any time in excess of the amounts necessary to make the payments required above may be applied by the University, free and clear of the lien of the Resolution, to the extent permitted by law, (i) to the redemption of Bonds in accordance with the Resolution or (ii) for any other lawful purpose of the University.

#### Construction Fund/Project Account

There shall be paid into the Construction Fund the amounts required to be so paid by the provisions of the Resolution or any Supplemental Resolution.

The University may establish within the Construction Fund separate Project Accounts and may establish one or more subaccounts in each Project Account. Income received from the investment of moneys in any Project Account in the Construction Fund shall be credited to such Project Account. Upon completion of any Project, the relevant Project Account shall be closed, and all remaining amounts in such Project Account shall be transferred to the Debt Service Account in the Bond Fund.

Before any payment is made from any Project Account in the Construction Fund, the University shall execute a Written Certificate showing with respect to each payment to be made the name of the person to whom payment is due and the amount to be paid and certifying that the obligation to be paid was incurred and is a proper charge against the Project Account in the Construction Fund and in a reasonable amount against the Project Account in the Construction Fund and has not been theretofore included in a prior Written Certificate, and that insofar as any such obligation was incurred for work, materials, equipment or supplies, such work was actually performed, or such materials, equipment or supplies were actually installed in furtherance of the acquisition of the Project or delivered at the site of the Project for that purpose or delivered for storage or fabrication or as a progress payment due on equipment being fabricated to order.

Before any payment is made from the Project Account in the Construction Fund for the payment of Costs of Issuance, the University shall execute its Written Certificate, signed by an Authorized Officer of the University, stating, in respect of each payment to be made, (a) the name and address of the person, firm or corporation to whom payment is due, (b) the amount to be paid, (c) the particular item of the Cost of Issuance to be paid, and (d) that the cost or obligation in this stated amount is a proper item of the Cost of Issuance and has not been paid.

### **PAYMENT AGREEMENTS**

The Resolution authorizes the Regents to enter into a Payment Agreement and to make a Payment Agreement Payment thereunder on a parity of lien with the payment of the Bonds if the Payment Agreement satisfies the requirements for Additional Bonds described in the Resolution (See "SECURITY FOR THE SERIES 2015A BONDS – Covenants – *Issuance of Additional Bonds*" in the front part of the Official Statement to which this **Appendix D** is attached for a description of requirements for issuance of Additional Bonds), taking into consideration regularly scheduled Payment Agreement Payments and

Receipts (if any) under the Payment Agreement. The following shall be conditions precedent to the use of any Payment Agreement on a parity with the Bonds:

(i) The University shall obtain an opinion of Bond Counsel on the due authorization and execution of such Payment Agreement, the validity and enforceability thereof and opining that the action proposed to be taken is authorized or permitted by the Resolution or the applicable provisions of any Supplemental Resolution and will not adversely affect the excludability for federal income tax purposes of the interest on any Outstanding Bonds.

(ii) Prior to entering into a Payment Agreement, the University shall adopt a resolution which shall:

A. set forth the manner in which the Payments and Receipts are to be calculated and a schedule of Payment Agreement Payment Dates;

B. establish general provisions for the rights of the parties to Payment Agreements; and

C. set forth such other matters as the University deems necessary or desirable in connection with the management of Payment Agreements as are not clearly inconsistent with the provisions of the Resolution.

The Payment Agreement may oblige the University to pay, on one or more scheduled and specified Payment Agreement Payment Dates, the Payments in exchange for the Payor's obligation to pay or to cause to be paid to the University, on scheduled and specified Payment Agreement Payment Dates, the Receipts. The University may also enter into Payment Agreements that are not reciprocated by the other party to the agreement.

If the University enters into a Parity Payment Agreement, Payments shall be made from the Debt Service Account and Annual Debt Service shall include any regularly scheduled University Payments adjusted by any regularly scheduled Receipts during a Fiscal Year. Receipts shall be paid directly into the Debt Service Account. Obligations to make unscheduled payments, such as termination payments, may not be entered into on a parity with the Bonds. To the extent that a Parity Payment Agreement has been designated as a hedge of the interest rate features of either Fixed Rate Bonds or Bonds bearing variable rates of interest, Annual Debt Service during the term of such Parity Payment Agreement shall be modified to reflect such Parity Payment Agreement.

Nothing in the Resolution precludes the University from entering into Payment Agreements with a claim on Pledged Revenues junior to that of the Bonds. Furthermore, nothing in the Resolution precludes the University from entering into obligations on a parity with the Bonds in connection with the use of Payment Agreements or similar instruments if the University obtains an opinion of Bond Counsel that the obligations of the University thereunder are consistent with the Resolution.

For purposes of the foregoing Payment Agreements provisions of the Resolution, the following terms have the following meanings:

"Payment" means any payment required to be made by or on behalf of the University under a Payment Agreement and which is determined according to a formula set forth in the Payment Agreement.

"Parity Payment Agreement" means a Payment Agreement under which the University's payment obligations are expressly stated to be secured by a pledge of and lien on Pledged Revenues on an equal

and ratable basis with the Pledged Revenues required to be paid into the Bond Fund to pay and secure the payment of the principal of and interest on Outstanding Bonds.

"Payment Agreement" means a written agreement, for the purpose of managing or reducing the University's exposure to fluctuations or levels of interest rates, currencies or commodities or for other interest rate, investment, asset or liability management purposes, entered into on either a current or forward basis by the University and a Qualified Counterparty, all as authorized by any applicable laws of the State. Such agreement may or may not be characterized by a structure of reciprocity of payment.

"Payment Agreement Payment Date" means any date specified in the Payment Agreement on which a Payment or Receipt is due and payable under the Payment Agreement.

"Receipt" means any payment (designated as such by a resolution) to be made to, or for the benefit of, the University under a Payment Agreement by the Payor.

"Payor" means a Qualified Counterparty to a Payment Agreement that is obligated to make one or more payments thereunder.

"Qualified Counterparty" means a party (other than the University or a party related to the University) who is the other party to a Payment Agreement that has or whose obligations are unconditionally guaranteed by a party whose long term debt is rated "A" or higher by Moody's and S&P and who is otherwise qualified to act as the other party to a Payment Agreement under any applicable laws of the State of Idaho.

### **COVENANTS CONCERNING THE TRUSTEE**

Wells Fargo Bank, N.A., acts as Trustee under the Resolution and also acts as paying agent, bond registrar, authenticating agent, and transfer agent with respect to the Bonds. The Trustee makes no representations as to the validity or sufficiency of the Resolution or of any Bonds issued thereunder or as to the security afforded by the Resolution, and the Trustee shall not incur any liability in respect thereof. The Trustee shall not be liable in connection with the performance of its duties under the Resolution except for its own negligence, misconduct or default.

The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in the Resolution. In case an Event of Default has occurred (which has not been cured), the Trustee shall exercise such of the rights and powers vested in it by the Resolution and use the same degree of care and skill in its exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

The Trustee, after a successor Trustee has been duly appointed and has accepted the duties of Trustee in writing, may at any time resign and be discharged of the duties and obligations created by the Resolution by giving not less than sixty (60) days' written notice to the University and to insurers of any outstanding Bonds.

The Trustee may be removed at any time by the University or by insurers of outstanding Bonds, so long as the respective insurer of any Bonds is not in default under its respective policy. Any Trustee appointed in succession to the Trustee shall (1) be a bank or trust company or national banking association, duly authorized to exercise trust powers, and (2) have a reported capital and surplus of not less than \$75,000,000.

## MODIFICATION OR AMENDMENT OF RESOLUTION

The Resolution or any Supplemental Resolution and the rights and obligations of the University and of the Registered Owners of the Bonds may be modified or amended at any time by a Supplemental Resolution and pursuant to the affirmative vote at a meeting of Registered Owners, or with the written consent without a meeting, (1) of the Registered Owners of at least sixty percent (60%) in aggregate principal amount of the Bonds then Outstanding, (2) in case less than all of the several Series of Bonds then Outstanding are affected by the modification or amendment, of the Registered Owners of at least sixty percent (60%) in principal amount of the Bonds of each Series so affected and then Outstanding, and (3) in case the modification or amendment changes the terms of any Mandatory Redemption Amounts, of the Registered Owners of at least sixty percent (60%) in principal amount of the Bonds of the particular Series and maturity entitled to such Mandatory Redemption Amounts and then Outstanding; provided, however, that if such modification or amendment will, by its terms, not take effect so long as any Bonds of any specified Series remain Outstanding, the consent of the Registered Owners of Bonds of such Series shall not be required and Bonds of such Series shall not be deemed to be Outstanding for the purpose of any calculation of Outstanding Bonds under this section. No such modification of amendment shall (x) extend the fixed maturity of any Bond, or reduce the principal amount or redemption price thereof, or reduce the rate or extend the time of payment of interest thereon, without the consent of the Registered Owner of each Bond so affected, or (y) reduce the aforesaid percentage of Bonds required for the affirmative vote or written consent to an amendment or modification of the Resolution, without the consent of the Registered Owners of all of the Bonds then Outstanding, or (z) without its written consent thereto, modify any of the rights or obligations of the Trustee.

The Resolution or any Supplemental Resolution and the rights and obligations of the University and of the Registered Owners of the Bonds may also be modified or amended at any time by a Supplemental Resolution, without the consent of any Registered Owners, but only to the extent permitted by law and only for any one or more of the following purposes:

(1) to add to the covenants and agreements of the University in the Resolution contained, other covenants and agreements thereafter to be observed, or to surrender any right or power reserved in the Resolution to or conferred upon the University;

(2) to make such provisions for the purpose of curing any ambiguity, or of curing or correcting any defective provision contained in the Resolution, or in regard to questions arising under the Resolution, as the University may deem necessary or desirable, and which shall not adversely affect the interests of the Trustee or the Registered Owners of the Bonds;

(3) to provide for the issuance of a Series of Bonds, and to provide the terms and conditions under which such Series of Bonds may be issued, subject to and in accordance with the provisions of Article VII of the Resolution;

(4) to provide for the issuance of the Bonds pursuant to a book-entry system or as uncertificated public obligations pursuant to the provisions of the Registered Public Obligations Act, Chapter 9 of Title 57, Idaho Code; and

(5) during the term of any credit enhancement agreements (including, without limitation, standby bond purchase agreements and letters of credit) permitted in Section 57-231, Idaho Code, to amend any provisions of the Resolution which is intended solely to be for the benefit of the issuer of the credit enhancement agreement.



Such Supplemental Resolution shall become effective as of the date of its adoption or such later date as shall be specified in such Supplemental Resolution.

Copies of any modification or amendment to the Resolution shall be sent to any Rating Agency maintaining a rating on the Bonds at least ten (10) days prior to the effective date thereof.

## **EVENTS OF DEFAULT AND REMEDIES OF REGISTERED OWNERS**

### Events of Default

If any one or more of the following Events of Default shall occur, it is an "event of default" under the Resolution:

(1) failure to make the due and punctual payment of any Principal Installment of a Bond when and as the same shall become due and payable, whether at maturity, by call for redemption, or declaration or otherwise;

(2) failure to make the due and punctual payment of any installment of interest on any Bond or any Mandatory Redemption Amount, when and as such interest installment or any Mandatory Redemption Amount shall become due and payable;

(3) failure by the University to perform or observe any other of the covenants, agreements, or conditions on its part in the Bond Resolution or in the Bonds contained, and such default shall continue for a period of thirty (30) days after written notice thereof to the University by the Trustee specifying such failure and requiring the same to be remedied, which period of thirty (30) days may not be extended by more than thirty (30) additional days without the prior written consent of all insurers of outstanding Bonds issued under the Resolution;

(4) a judgment for the payment of money shall be rendered against the University, and any such judgment shall not be discharged within one hundred twenty (120) days of the entry thereof, or an appeal shall not be taken therefrom or from the order, decree or process upon which or pursuant to which such judgment shall have been granted or entered, in such manner as to set aside or stay the execution of or levy under such judgment, or order, decree or process or the enforcement thereof;

(5) dissolution or liquidation of the University or the filing by the University of a voluntary petition in bankruptcy, or the commission by the University of any act of bankruptcy, or adjudication of the University as a bankrupt, or assignment by the University for the benefit of its creditors, or the entry by the University into an agreement of composition with its creditors, or the approval by a court of competent jurisdiction of a petition applicable to the University in any proceeding for its reorganization instituted under the provisions of the federal bankruptcy act, as amended, or under any similar act in any jurisdiction which may now be in effect or which may hereafter be enacted;

(6) if an order or decree shall be entered, with the consent or acquiescence of the University, appointing a receiver or receivers of the Project, or any part thereof, or if such order or decree, having been entered without the consent and acquiescence of the University, shall not be vacated or discharged or stayed within ninety (90) days after the entry thereof; and

(7) any event of default specified in a Supplemental Resolution;

then, and in each and every such case, so long as such Event of Default shall not have been remedied, unless the Outstanding amount of the Bonds shall have already become due and payable, the Trustee (by thirty (30) days' written notice to the University), or the Registered Owners of not less than twenty five percent (25%) of the Bonds then Outstanding (by notice in writing to the University and the Trustee) may declare the Bonds then Outstanding, and the interest accrued thereon, to be due and payable immediately and upon any such declaration the same shall become and be immediately due and payable, anything in the Resolution or in the Bonds contained to the contrary notwithstanding.

Notwithstanding the foregoing, neither the Registered Owners of twenty-five percent (25%) of the Uninsured Bonds then Outstanding, nor the Owners of twenty-five percent (25%) of any series of Bonds then Outstanding, nor the Trustee, may declare any other series of Bonds immediately due and payable without the prior written consent of the relevant insurer of such series of Bonds.

#### Rights and Remedies of Registered Owners

A. No Registered Owner of any Bond shall have any right to institute any proceeding, judicial or otherwise, with respect to the Resolution, or for the appointment of a receiver or trustee, or for any other remedy thereunder, unless

(1) such Registered Owner has previously given written notice to the Trustee of a continuing Event of Default;

(2) the Registered Owners of not less than twenty-five percent (25%) in principal amount of the Bonds shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee;

(3) such Registered Owners have offered to the Trustee reasonable indemnity against the costs, expenses, and liabilities to be incurred in compliance with such request;

(4) the Trustee for sixty (60) days after its receipt of such notice, request, and offer of indemnity has failed to institute any such proceedings; and

(5) no direction inconsistent with such written request has been given to the Trustee during such sixty (60) day period by the Registered Owners of a majority in principal amount of the Bonds; it being understood and intended that no one or more Registered Owner of Bond shall have any right in any manner whatever by virtue of, or by availing of, any provision of the Resolution to affect, disturb, or prejudice the rights of any other Registered Owner of Bonds, or to obtain or to seek to obtain priority or preference over any other Registered Owner, or to enforce any right under the Resolution, except in the manner provided and for the equal and ratable benefit of all the Registered Owners of Bonds.

B. The Registered Owners of a majority in principal amount of the Outstanding Bonds shall have the right to direct the time, method, and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee, provided that:

(1) such direction shall not be in conflict with any rule of law or the Resolution,

(2) the Trustee shall not determine that the action so directed would be unjustly prejudicial to the Registered Owners not taking part in such direction, and

(3) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

### DEFEASANCE

A. If the University shall pay or cause to be paid, or there shall otherwise be paid, to the Registered Owners of all Bonds the principal of or redemption price, if applicable, and interest due or to become due thereon, if applicable, at the times and in the manner stipulated therein and in the Resolution, or such Bonds shall have been deemed to have been paid as provided in the Supplemental Resolution authorizing a Series of Bonds, then the pledge of any Pledged Revenues, and other moneys, securities and funds pledged under the Resolution and all covenants, agreements and other obligations of the University to the Registered Owners, shall thereupon cease, terminate and become void and be discharged and satisfied. In such event, the Trustee shall cause an accounting for such period or periods as shall be requested by the University to be prepared and filed with the University and, upon the request of the University, shall execute and deliver to the University all such instruments as may be desirable to evidence such discharge and satisfaction, and the Trustee shall pay over or deliver to the University all moneys or securities held by it pursuant to the Resolution which are not required for the payment of principal or redemption price, if applicable, on Bonds.

B. Bonds or interest installments the payment or redemption of which moneys shall have been set aside and shall be held in trust by the Trustee (through deposit by the University of funds for such payment or redemption or otherwise) at the maturity shall be deemed to have been paid within the meaning and with the effect expressed in subsection (A) of this section. All Outstanding Bonds of any Series shall prior to the maturity or redemption date thereof be deemed to have been paid within the meaning and with the effect expressed in subsection (A) of this section if (1) in case any of said Bonds are to be redeemed on any date prior to their maturity, the University shall have given to the Trustee in form satisfactory to it irrevocable instructions to mail to the Registered Owners of such Bonds, notice of redemption of such Bonds on said date, (2) there shall have been deposited with the Trustee either moneys in an amount which shall be sufficient, or Investment Securities, as approved by insurers of any Outstanding Bonds, (including any Investment Securities issued or held in book-entry form on the books of the Department of the Treasury of the United States of America), the principal of and the interest on which when due will provide moneys which, together with the moneys, if any, deposited with the Trustee at the same time, shall be sufficient, to pay when due the principal or redemption price, as applicable, and interest due and to become due, if applicable, on said Bonds on and prior to the redemption date or maturity date thereof, as the case may be, without adversely affecting the tax-exempt status of the interest on said Bonds taxable under the Code, and (3) in the event said Bonds are not by their terms subject to redemption within the next succeeding sixty (60) days, the University shall have given the Trustee in form satisfactory to it irrevocable instructions to mail, first class postage prepaid, a notice to the Registered Owners of such Bonds that the deposit required by (2) above has been made with the Trustee and that said Bonds are deemed to have been paid in accordance with this section and stating such maturity or redemption date upon which moneys are to be available for the payment of the principal or redemption price, as applicable, and interest due and to become due if applicable on said Bonds.

The 2007 Supplemental Resolution amended the defeasance provisions of the Resolution described in paragraph (B)(2) above to permit investment of escrowed funds in certain noncallable governmental obligations without consent of insurers of any Outstanding Bonds to such investment.

## APPENDIX E

## Depository Trust Company Information

*The following information concerning DTC and DTC's book-entry-only system has been extracted from a schedule prepared by DTC entitled "SAMPLE OFFERING DOCUMENT LANGUAGE DESCRIBING BOOK-ENTRY-ONLY ISSUANCE," a source that the Regents, the University and the Underwriter believe to be reliable, but the Regents, the University and the Underwriter take no responsibility for the accuracy thereof. The contents of the DTC website referenced below are not incorporated in this Official Statement by such reference.*

The Depository Trust Company ("**DTC**"), New York, NY, will act as securities depository for the Series 2015A Bonds. The Series 2015A Bonds will be issued as fully registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully registered certificate will be issued for each maturity of the Series 2015A Bonds, as set forth on the inside cover page hereof, each in the aggregate principal amount of such maturity of the Series 2015A Bonds and deposited with DTC.

DTC, the world's largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC's participants ("**Direct Participants**") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("**DTCC**"). DTCC is the holding company for DTC, National Securities Clearing Corporation, and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("**Indirect Participants**"). DTC has a Standard & Poor's rating of AA+. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com) and [www.dtc.org](http://www.dtc.org).

Purchases of Series 2015A Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Series 2015A Bonds on DTC's records. The ownership interest of each actual purchaser of Series 2015A Bonds ("**Beneficial Owner**") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in Series 2015A Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Series 2015A Bonds, except in the event that use of the book-entry system for the Series 2015A Bonds is discontinued.

To facilitate subsequent transfers, all the Series 2015A Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co. or such other name as may be requested by an authorized representative of DTC. The deposit of a series of Series 2015A Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of Series 2015A Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts Series 2015A Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

As long as the book-entry system is used for Series 2015A Bonds, the Trustee and the Regents will give any notices required to be given to Owners of Series 2015A Bonds only to DTC. Any failure of DTC to advise any Direct Participant, or of any Direct Participant to notify any Indirect Participant, or of any Direct Participant or Indirect Participant to notify any Beneficial Owner, of any such notice and its content or effect will not affect the validity of the action premised on such notice. Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of the Series 2015A Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Series 2015A Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Resolution. For example, Beneficial Owners of Series 2015A Bonds may wish to ascertain that the nominee holding the Series 2015A Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners, in the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of the notices be provided directly to them. Redemption notices shall be sent to DTC as long as it is securities depository for the Series 2015A Bonds. If less than all of the Series 2015A Bonds of a single maturity are being redeemed, DTC's practice is to determine by lot the amount of interest of each Direct Participant in such issue to be redeemed. Redemption notices shall be sent to DTC. If less than all of the Series 2015A Bonds within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Series 2015A Bonds unless authorized by a Direct Participant on accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Regents as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Series 2015A Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Principal, premium, if any, and interest payments on the Series 2015A Bonds are to be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the Regents or Paying Agent, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC or its nominee, the Paying Agent or the Regents, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal of, premium, if any, and interest payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Regents or the Paying Agent; disbursement of such payments to Direct Participants shall be the responsibility of DTC; and disbursement of such payments to the Beneficial Owners shall be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as depository with respect to the Series 2015A Bonds at any time by giving reasonable notice to the Regents or the Trustee. Under such circumstances, in the event that a successor depository is not obtained, certificates for the Series 2015A Bonds are required to be printed and delivered.

The Regents may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, certificates for the Series 2015A Bonds will be printed and delivered.

## APPENDIX F

## Opinions of Co-Bond Counsel for Series 2015A Bonds

\_\_\_\_\_, 2015

University of Idaho  
P.O. Box 443168  
Moscow Idaho 83844-3168

RE: The Regents of the University of Idaho General Revenue Refunding Bonds,  
Series 2015A

We have acted as co-bond counsel to the Regents of the University of Idaho (the "Regents") in connection with the issuance by the Regents of their General Revenue Refunding Bonds, Series 2015A (the "Bonds"). The Bonds are being issued pursuant to (i) Title 57, Chapter 5 and Title 33, Chapter 38, Idaho Code, as amended and (ii) a Resolution, adopted by the Regents on November 22, 1991, as heretofore amended, supplemented, and restated, and as further supplemented and amended by a supplemental resolution of the Regents adopted on December \_\_, 2014 (collectively, the "Resolution"). The Bonds are being issued (i) to provide funds to refund certain outstanding bonds issued by The Regents, to finance and refinance certain capital improvements of the University of Idaho (the "University"), and (ii) to pay costs of issuance associated with the Bonds. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Resolution.

Our services as co-bond counsel have been limited to the preparation of the legal proceedings and supporting certificates authorizing the issuance of the Bonds under the applicable laws of the State of Idaho and to a review of the transcript of such proceedings and certificates. As to questions of fact material to our opinion, we have relied upon the certified proceedings and other certifications of public officials furnished to us without undertaking to verify the same by independent investigation. Our examination has been limited to the foregoing as they exist or are in effect as of the date hereof. Our opinion is limited to the matters expressly set forth herein, and we express no opinion concerning any other matters.

Based on our examination and the foregoing, we are of the opinion as of the date hereof and under existing laws as follows:

1. The Resolution has been duly adopted by the Regents and constitutes a valid and binding obligation of the Regents enforceable upon the Regents.
2. The Resolution creates a valid lien on the amounts pledged thereunder for the security of the Bonds.
3. The Bonds are valid and binding limited obligations of the Regents, payable solely from the Pledged Revenues and other amounts pledged therefor under the Resolution.

4. Based on an analysis of currently existing laws, regulations, decisions and interpretations, interest on the Bonds is excludable from gross income for purposes of federal income tax under existing laws as enacted and construed on the date of initial delivery of the Bonds, assuming the accuracy of the certifications of the Regents and continuing compliance by the Regents with the requirements of the Internal Revenue Code of 1986. Interest on the Bonds is not an item of tax preference for purposes of either individual or corporate federal alternative minimum tax; however interest on the Bonds held by a corporation (other than an S corporation, regulated investment company, or real estate investment trust) may be indirectly subject to federal alternative minimum tax because of its inclusion in the adjusted current earnings of a corporate holder.

5. Interest on the Bonds is exempt from State of Idaho personal income taxes.

In rendering our opinion, we wish to advise you that:

(i) The rights of the Owners of the Bonds and the enforceability thereof and of the Resolution may be subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable, and their enforcement may also be subject to the application of equitable principles and the exercise of judicial discretion in appropriate cases;

(ii) We express no opinion herein as to the accuracy, adequacy, or completeness of the Official Statement or any other offering material relating to the Bonds; and

(iii) Except as set forth above, we express no opinion regarding any other tax consequences relating to ownership or disposition of, or the accrual or receipt of interest on the Bonds.

Respectfully submitted,

**SKINNER FAWCETT LLP**

**BALLARD SPAHR LLP**



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**THE REGENTS OF THE UNIVERSITY OF IDAHO**

**Supplemental Resolution Authorizing the  
Issuance and Sale of**

**up to \$22,285,000  
General Revenue Refunding Bonds  
Series 2015A**

**Adopted December 18, 2014**

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## SUPPLEMENTAL RESOLUTION

A SUPPLEMENTAL RESOLUTION of the Regents of the University of Idaho authorizing the issuance and sale of General Revenue Refunding Bonds, Series 2015A, in the principal amount of up to \$22,285,000 (the “Series 2015A Bonds”), authorizing the execution and delivery of a Bond Purchase Agreement, Escrow Agreement, Continuing Disclosure Agreement, Preliminary Official Statement, Final Official Statement and other documents, and providing for other matters relating to the authorization, issuance, sale and payment of the Series 2015A Bonds.

WHEREAS, the University of Idaho (the “University”) is a state institution of higher education and body politic and corporate organized and existing under and pursuant to the Constitution and laws of the State of Idaho; and

WHEREAS, the Regents of the University of Idaho (the “Regents”) are authorized, pursuant to the Educational Institutions Act of 1935, the same being Chapter 38, Title 33, Idaho Code (the “Act”), and the Constitution of the State of Idaho, to issue bonds for “projects” as defined in said Act; and

WHEREAS, the Regents are authorized pursuant to said Act and pursuant to Title 57, Chapter 5, Idaho Code, to issue refunding bonds for “projects” as defined in said Act; and

WHEREAS, on November 22, 1991, the Regents adopted a Resolution, which has been subsequently amended and supplemented (as so amended and supplemented, the “Resolution” or “Bond Resolution”) relating to the issuance and sale of facility revenue bonds, and providing among other things for the issuance of additional bonds for future projects or refunding purposes (the “Additional Bonds”), secured by Pledged Revenues (as defined in the Resolution); and

WHEREAS, the University is authorized under the provisions of Article VII of the Resolution to issue series of Additional Bonds upon compliance with the requirements of Section 7.2 of the Resolution; and

WHEREAS, on January 24, 2005, the Regents adopted a resolution supplementing the Resolution and providing for the issuance and sale of \$30,740,000 in aggregate principal amount of General Revenue Refunding Bonds, Series 2005A (the “Series 2005A Bonds”) as Additional Bonds thereunder; and

WHEREAS, the Regents have determined that certain of the Series 2005A Bonds as more fully described herein (collectively, the “Refunded Bonds”) can be refunded in accordance with the Act and the Resolution, and achieve savings and other objectives that the Regents find to be beneficial to the University in accordance with Title 57, chapter 5, Idaho Code ; and

WHEREAS, in order to refund the Refunded Bonds the Regents desire to issue the Series 2015A Bonds;

NOW, THEREFORE, BE IT RESOLVED BY THE REGENTS OF THE UNIVERSITY OF IDAHO AS FOLLOWS:

## ARTICLE I

### DEFINITIONS

#### Section 1.1 Definitions.

(a) Except as provided in subparagraph (b) of this Section, all defined terms contained in this Supplemental Resolution shall have the same meanings as set forth in the Resolution.

(b) As used in this Supplemental Resolution, unless the context shall otherwise require, the following terms shall have the following meanings:

“Approving Opinion” means an Opinion of Counsel to the effect that an action being taken is authorized by the applicable provisions of the Resolution and will not adversely affect the tax-exempt status of interest on the Series 2015A Bonds.

“Authorized Denomination” means \$5,000 or any integral multiple thereof.

“Bond Purchase Agreement” means the Bond Purchase Agreement between the Regents and the Underwriter pursuant to which the Series 2015A Bonds are to be sold.

“Continuing Disclosure Agreement” means the Continuing Disclosure Agreement between the Regents and the Trustee, as Dissemination Agent, with respect to the Series 2015A Bonds.

“Corporate Trust Office” of the Trustee means the designated corporate trust office of the Trustee designated in writing to the University or such other office designated by the Trustee from time to time.

“Electronic Notice” means notice through facsimile transmission, internet, e-mail or other electronic means of communication.

“Escrow Account” means the escrow account established under the Escrow Agreement to refund and defease the Refunded Bonds.

“Escrow Agent” means Wells Fargo Bank, N.A., or its successors in function, as now or hereafter designated, as escrow agent under the Escrow Agreement.

“Escrow Agreement” means the agreement between the Regents or University and the Escrow Agent, dated the date of delivery of the Series 2015A Bonds, providing for an Escrow Account for deposit of the Refunding Proceeds.

“Fitch” means Fitch Ratings, its successors and their assigns, and, if such entity shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Fitch” shall be deemed to refer to any other nationally recognized securities rating agency (other than Moody’s or S&P) designated by the Regents, with notice to the Trustee.

“Issue Date” means, with respect to any Series 2015A Bonds, the date on which such Series 2015A Bonds are first delivered to the purchasers thereof.

“Moody’s” means Moody’s Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and assigns and, if such entity shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency (other than S&P or Fitch) designated by the Regents, with notice to the Trustee.

“Nominee” means Cede & Co., as nominee of DTC, the initial Securities Depository for the Series 2015A Bonds, and any successor nominee of DTC and, if another Securities Depository replaces DTC as Securities Depository hereunder, any nominee of such substitute Securities Depository.

“Notice by Mail” or “notice” of any action or condition “by Mail” means a written notice meeting the requirements of this Supplemental Resolution mailed by first class mail, postage prepaid.

“Opinion of Counsel” means a written opinion of counsel satisfactory to the Regents and not objected to by the Trustee with respect to the Series 2015A Bonds.

“Parameters” means the maximum terms established hereby for the Series 2015A Bonds, within which the terms of the Series 2015A Bonds may be established in the Terms Certificate, such Parameters being set in Exhibit B attached hereto.

“Payment Date” means each April 1 and October 1, commencing on the date specified in the Terms Certificate.

“Preliminary Official Statement” means the Preliminary Official Statement of the Regents with respect to the Series 2015A Bonds.

“Rating Agency” means Fitch, S&P, Moody’s or any other nationally recognized rating agency, in each case then providing or maintaining a rating on the Series 2015A Bonds at the request of the Regents.

“Refunded Bonds” means that portion of the Series 2005A Bonds as specified in the Terms Certificate.

SUPPLEMENTAL RESOLUTION – PAGE 3

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“Refunding Proceeds” means the portion of the proceeds due the Regents from the Underwriter to purchase the Series 2015A Bonds pursuant to Section 3.3(a) of this Supplemental Resolution for purposes of refunding the Refunded Bonds.

“Resolution” means the Resolution adopted by the Regents on November 22, 1991, as previously amended and supplemented, including the Amendments as defined in the Supplemental Resolution dated January 24, 2005, the Supplemental Resolution dated October 11, 2007, the Supplemental Resolution dated February 18, 2010, the Supplemental Resolution dated April 18, 2013, the Supplemental Resolution dated June 19, 2014 and as amended and supplemented by this Supplemental Resolution.

“S&P” means Standard & Poor’s Ratings Services, its successors and their assigns, and, if such entity shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “S&P” shall be deemed to refer to any other nationally recognized securities rating agency (other than Fitch or Moody’s) designated by the Regents, with notice to the Trustee.

“Series 2015A Bondholder,” “Holder” and “Bondholder” mean the holder of any Series 2015A Bond.

“Series 2015A Bonds” means the General Revenue Refunding Bonds, Series 2015A, of the Regents authorized by this Supplemental Resolution.

“Series 2015A Costs of Issuance” means the Costs of Issuance incurred in connection with the issuance, sale and delivery of the Series 2015A Bonds.

“Series 2015A Costs of Issuance Fund” means the fund established pursuant to Section 3.2 hereof into which shall be deposited the portion of the proceeds of the Series 2015A Bonds necessary to pay the Series 2015A Costs of Issuance.

“Supplemental Resolution” means this Supplemental Resolution adopted by the Regents on December 18, 2014, authorizing the Series 2015A Bonds.

“Terms Certificate” means one or more certificates of the Regents signed by the Bursar, or authorized designee, in substantially the form of Exhibit C attached hereto, specifying certain terms of the Series 2015A Bonds.

“Underwriter” means George K. Baum & Company, or its successor in function, as the original purchaser of the Series 2015A Bonds.

Section 1.2 Authority for Supplemental Resolution; References to University. This Supplemental Resolution is adopted pursuant to the provisions of the Act and the Resolution. References herein to the “University” shall be deemed to refer to the Regents or other appropriate authority thereof pursuant to the Act and other applicable laws.



## ARTICLE II

## AUTHORIZATION, TERMS AND ISSUANCE OF SERIES 2015A BONDS

Section 2.1 Authorization of Series 2015A Bonds, Principal Amount, Designation and Series; Confirmation of Pledged Revenues. The Series 2015A Bonds are hereby authorized for issuance, to be sold at a price not less than par and subject to the Parameters, in order to provide sufficient funds for (i) the refunding of the Refunded Bonds, and (ii) paying costs of issuance, and in accordance with and subject to the terms, conditions and limitations established in the Resolution, as previously amended and as amended by this Supplemental Resolution. The Series 2015A Bonds shall be issued only in fully registered form, without coupons. The Series 2015A Bonds are secured by the pledge of the Pledged Revenues under Section 5.1 of the Resolution equally and ratably with all Outstanding Bonds issued under the Resolution.

Section 2.2 Finding and Purpose. The Regents hereby find, determine and declare:

(a) pursuant to Section 33-3804(i) and Section 57-504, Idaho Code, the Refunded Bonds can be refunded with a debt service savings and to the benefit and advantage of the University and the principal amount of the Series 2015A Bonds shall not exceed the principal amount of the Refunded Bonds;

(b) pursuant to Section 33-3809, Idaho Code, this Supplemental Resolution does not contract a debt on behalf of, or in any way obligate the State of Idaho, or pledge, assign or encumber in any way, or permit the pledging, assigning or encumbering in any way of, appropriations made by the Legislature, or revenue derived from the investment of the proceeds of the sale, and from the rental of such lands as have been set aside by the Idaho Admission Bill approved July 3, 1890, or other legislative enactments of the United States, for the use and benefit of the respective state educational institutions;

(c) pursuant to Section 33-3810, Idaho Code, the Series 2015A Bonds shall be exclusively obligations of the University, payable only in accordance with the terms thereof and shall not be obligations general, special or otherwise of the State of Idaho; and

(d) the applicable requirements of Article VII of the Resolution relating to issuance of Additional Bonds will have been complied with upon the delivery of the Series 2015A Bonds.

Section 2.3 Issue Date. The Series 2015A Bonds shall be dated the date of original delivery thereof.

#### Section 2.4 Series 2015A Bonds.

(a) The Series 2015A Bonds shall be limited to the aggregate principal amount specified in the Terms Certificate, but within the Parameters, and shall be designated “General Revenue Refunding Bonds, Series 2015A” or such other designation as the Regents may determine upon the issuance of said Bonds. The Series 2015A Bonds may have serial or other maturities, may be initially sold at a premium, and may have separate bonds with different interest rates but the same maturity, all within the Parameters and as specified in the Terms Certificate.

The Series 2015A Bonds shall bear interest at the rates and mature on the dates and in the principal amounts in each year as specified in the Terms Certificate. The Series 2015A Bonds shall bear interest from the date of original delivery, payable on the dates as specified in the Terms Certificate. Interest on the Series 2015A Bonds shall be computed upon the basis of a 360-day year, consisting of twelve 30-day months.

#### Section 2.5 Sale of Series 2015A Bonds.

(a) The Series 2015A Bonds authorized to be issued herein are hereby authorized for sale to the Underwriter in a principal amount (plus any original issue discount or premium) in compliance with the Parameters and as specified in the Terms Certificate. The Series 2015A Bonds may be sold with an Underwriter’s discount or fee (but without a net reoffering discount) not exceeding the Parameters and as specified in the Terms Certificate, on the terms and conditions set forth in the Bond Purchase Agreement.

(b) To evidence the acceptance of the Bond Purchase Agreement, the Bursar is hereby authorized to execute and deliver the Bond Purchase Agreement in substantially the form presented at this meeting and with such final rates and terms for the Series 2015A Bonds as are within the Parameters and is authorized to determine the rate of interest on the Bonds, the conditions on which and prices at which the Bonds may be redeemed prior to maturity, the price at which the Bonds are to be sold, the principal amount and denomination of the Bonds, the amount of principal of the Bonds maturing each year and the dates upon which the principal and interest shall be paid, all subject to the foregoing Parameters and provision of the Parameters attached as Exhibit “B” and in accordance with Section 57-235, Idaho Code.

(c) The Preliminary Official Statement of the Regents prepared in connection with the offering of the Series 2015A Bonds, in substantially the form presented at this meeting, with such changes, omissions, insertions and revisions as the Bursar shall approve, is hereby authorized for use by the Underwriter for distribution to prospective purchasers of the Series 2015A Bonds and other interested persons. The Bursar or authorized designee is hereby authorized to sign a certificate to “deem final” the Preliminary Official Statement pursuant to SEC Rule 15c2-12 in connection with the offering of the

## Series 2015A Bonds.

In order to comply with subsection (b)(5) of SEC Rule 15c2-12, the Underwriter shall provide in the Bond Purchase Agreement that it is a condition to delivery of the Series 2015A Bonds that the Regents and the Trustee shall have executed and delivered the related Continuing Disclosure Agreement. The Continuing Disclosure Agreement is proposed to be entered into between the Trustee and Regents and is hereby approved in all respects in substantially the form presented to the Regents with such changes, omissions, insertions and revisions as the Bursar shall approve, and the Bursar or authorized designee is hereby authorized to execute and deliver the Continuing Disclosure Agreement with respect to the Series 2015A Bonds.

The President, the Provost and Executive Vice President, the Vice President for Finance and Administration and Bursar, and the Secretary of the Regents, and any authorized designee of the same, are, and each of them is, hereby authorized to do or perform all such acts as may be necessary or advisable to comply with this Supplemental Resolution and/or the Bond Purchase Agreement and to carry the same into effect.

The Final Official Statement of the Regents for the sale of the Series 2015A Bonds, in substantially the form of the Preliminary Official Statement presented at this meeting, with such changes, omissions, insertions and revisions as the Bursar shall approve, is hereby authorized, and the Bursar shall sign such Final Official Statement and deliver such Final Official Statement to the Underwriter for distribution to prospective purchasers of the Series 2015A Bonds and other interested persons, which signature shall evidence such approval.

Section 2.6 Delivery of Series 2015A Bonds. The Series 2015A Bonds shall be delivered to the Underwriter upon compliance with the provisions of the Resolution, at such times and places as provided in, and subject to, the provisions of the Bond Purchase Agreement.

Section 2.7 Form of Series 2015A Bonds. The form of the Series 2015A Bonds is attached to this Supplemental Resolution as Exhibit A and is incorporated herein by this reference.

Section 2.8 Book-Entry Only System.

(a) The Series 2015A Bonds shall initially be registered on the Bond Register in the name of Cede & Co., the nominee for the Securities Depository, and no Beneficial Owner will receive certificates representing their respective interests in the Series 2015A Bonds, except in the event the Trustee issues Replacement Bonds as provided below. It is anticipated that during the term of the Series 2015A Bonds, the Securities Depository will make book-entry transfers among the DTC Participants and receive and transmit payments of principal of and interest on the Series 2015A Bonds until and unless the Trustee authenticates and delivers Replacement Bonds to the Beneficial Owners as described below. So long as any of the Series 2015A Bonds are registered in

the name of Cede & Co, as nominee of the DTC, all payments with respect to principal of, premium, if any, and interest on the Series 2015A Bonds and all notices with respect to the Series 2015A Bonds shall be made and given in the manner provided in the Representations Letter.

(b) If the Securities Depository determines to discontinue providing its services with respect to the Series 2015A Bonds and the University cannot obtain a qualified successor Securities Depository, or if the University determines not to use the Book-Entry System of the Securities Depository, the University shall execute and the Trustee shall authenticate and deliver one or more Series 2015A Bond certificates (the "Replacement Bonds") to the DTC Participants in principal amounts and maturities corresponding to the identifiable Beneficial Owners' interests in the Series 2015A Bonds, with such adjustments as the Trustee may find necessary or appropriate as to accrued interest and previous calls for redemption, if any. In such event, all references to the Securities Depository herein shall relate to the period of time when the Securities Depository has possession of at least one Series 2015A Bond. Upon the issuance of Replacement Bonds, all references herein to obligations imposed upon or to be performed by the Securities Depository shall be deemed to be imposed upon and performed by the Trustee, to the extent applicable with respect to such Replacement Bonds.

(c) With respect to Series 2015A Bonds registered in the name of Cede & Co. as nominee for the Securities Depository, neither the University nor the Trustee shall have any responsibility to any Beneficial Owner with respect to:

(i) the sending of transaction statements, or maintenance, supervision, or review of records of the Securities Depository;

(ii) the accuracy of the records of the Securities Depository or Cede & Co. with respect to any ownership interest in the Series 2015A Bonds;

(iii) the payment to any Beneficial Owner, or any person other than the Securities Depository, of any amount with respect to principal of, interest on, or redemption premium, if any, on the Series 2015A Bonds; or

(iv) any consent given or other action taken by the Securities Depository or Cede & Co. as owner of the Series 2015A Bonds.

(d) The University has executed and delivered to DTC the Representations Letter with respect to Bonds issued under the Resolution. Such Representations Letter is for the purpose of effectuating the initial Book-Entry System for the Series 2015A Bonds through DTC as Securities Depository and shall not be deemed to amend, supersede or supplement the terms of this Bond Resolution which are intended to be complete without reference to the

Representations Letter. In the event of any conflict between the terms of the Representations Letter and the terms of this Supplemental Resolution, the terms of this Supplemental Resolution shall control. The Securities Depository may exercise the rights of a Registered Owner hereunder only in accordance with the terms hereof applicable to the exercise of such rights.

Section 2.9 Successor Securities Depository. In the event the Securities Depository resigns, is unable to properly discharge its responsibilities or is no longer qualified to act as a securities depository and registered clearing agency under the Securities and Exchange Act of 1934, as amended, or other applicable state or federal statute or regulation, the Trustee, with the written consent of the University, may appoint a successor Securities Depository, provided the Trustee receives written evidence satisfactory to the Trustee with respect to the ability of the successor Securities Depository to discharge its responsibilities. Any such successor Securities Depository shall be a securities depository which is a registered clearing agency under the Securities and Exchange Act of 1934, as amended, or other applicable state or federal statute or regulation. Upon the appointment of a successor Securities Depository, the Trustee shall cause the authentication and delivery of Series 2015A Bonds to the successor Securities Depository in appropriate denominations and form as provided herein.

Section 2.10 Further Authority. The Bursar or any authorized designee thereof and such other officers of the Regents or University as may be required, are hereby authorized and directed to execute all such certificates, documents and other instruments as may be necessary or advisable to provide for the issuance, sale, registration and delivery of the Series 2015A Bonds, including, without limitation, the Official Statement and the Terms Certificate.

Section 2.11 Tax Exemption of Bonds.

(a) The Bursar is hereby authorized and directed to execute such Tax Certificates as shall be necessary to establish that (i) the Series 2015A Bonds are not “arbitrage bonds” within the meaning of Section 148 of the Code and the Regulations, (ii) the Series 2015A Bonds are not and will not become “private activity bonds” within the meaning of Section 141 of the Code, (iii) all applicable requirements of Section 149 of the Code are and will be met, (iv) the covenants of the Regents contained in this will be complied with and (v) interest on the Series 2015A Bonds is not and will not become includible in gross income for federal income tax purposes under the Code and applicable Regulations.

(b) The Regents and the University covenant and certify to and for the benefit of the Series 2015A Bondholders from time to time of the Series 2015A Bonds that:

(i) the University will at all times comply with the provisions of any Tax Certificates;

(ii) the University will at all times comply with the rebate requirements contained in Section 148(f) of the Code, including, without limitation, the entering into any necessary rebate calculation agreement to provide for the calculations of amounts required to be rebated to the United States, the keeping of records necessary to enable such calculations to be made and the timely payment to the United States, of all amounts, including any applicable penalties and interest, required to be rebated;

(iii) no use will be made of the proceeds of the issue and sale of the Series 2015A Bonds, or any funds or accounts of the University which may be deemed to be proceeds of the Series 2015A Bonds, pursuant to Section 148 of the Code and applicable Regulations, which use, if it had been reasonably expected on the date of issuance of the Series 2015A Bonds, would have caused the Series 2015A Bonds to be classified as “arbitrage bonds” within the meaning of Section 148 of the Code;

(iv) the University will not use or permit the use of any of its facilities or properties in such manner that such use would cause the Series 2015A Bonds to be “private activity bonds” described in Section 141 of the Code;

(v) no bonds or other evidences of indebtedness of the University that are reasonably expected to be paid out of substantially the same source of funds as the Series 2015A Bonds have been or will be issued, sold or delivered within a period beginning 15 days prior to the sale of the Series 2015A Bonds and ending 15 days following the delivery of the Series 2015A Bonds, other than the Series 2015A Bonds; and

(vi) the University will not take any action that would cause interest on the Series 2015A Bonds to be or to become ineligible for the exclusion from gross income of the Series 2015A Bondholders of the Series 2015A Bonds as provided in Section 103 of the Code, nor will it omit to take or cause to be taken, in timely manner, any action, which omission would cause interest on the Series 2015A Bonds to be or to become ineligible for the exclusion from gross income of the Series 2015A Bondholders of the Series 2015A Bonds as provided in Section 103 of the Code.

Pursuant to these covenants, the Regents and the University obligate themselves to comply throughout the term of the issue of the Series 2015A Bonds with the requirements of Section 103 of the Code and the Regulations proposed or promulgated thereunder.

## ARTICLE III

## CREATION OF ACCOUNTS; APPLICATION OF SERIES 2015A BOND PROCEEDS

Section 3.1 Pledge of Pledged Revenues. Subject only to the provisions of the Resolution permitting the application thereof for the purposes and on the terms and conditions set forth herein, all of the Pledged Revenues have been and are hereby irrevocably pledged as described in Section 5.3 of the Resolution first, to the payment of the principal of, premium, if any, and interest on all Bonds Outstanding under the Resolution (including the Series 2015A Bonds), second, to the replenishment of any Debt Service Reserve Account as may be required by Section 5.5 of the Resolution, and thereafter for the purposes specified in Section 5.3D of the Resolution.

Section 3.2 Creation of Funds and Accounts. In connection with the issuance of the Series 2015A Bonds, the University hereby establishes the Series 2015A Costs of Issuance Fund, to be held by the University.

Section 3.3 Application of Proceeds of Series 2015A Bonds. Proceeds of the sale of the Series 2015A Bonds shall be applied as follows:

(a) The Refunding Proceeds, in the amount specified in the Terms Certificate, shall be transferred to the Escrow Agent for investment as contemplated by the Escrow Agreement (as hereinafter approved) and in accordance with the provisions of Section 57-504 Idaho Code (except for any amount to be retained as cash), and the obligations in which such proceeds are so invested and any remaining cash shall be deposited in escrow by the Escrow Agent as required by the Escrow Agreement;

(b) The amount necessary to pay the Series 2015A Costs of Issuance, in the amount specified in the Terms Certificate, shall be deposited to the Series 2015A Costs of Issuance Fund held by the University. Any balance remaining in the Series 2015A Costs of Issuance Fund, after payment of the Series 2015A Costs of Issuance, shall be deposited to the Debt Service Account in the Bond Fund for payment of the Series 2015A Bonds.

Section 3.4 Investment of Moneys. Any moneys in any of the funds and accounts to be established by the Trustee pursuant to this Supplemental Resolution (other than the Bond Purchase Fund) shall be invested pursuant to the terms of the Resolution.

Section 3.5 Repayment to the Regents. When there are no longer any Series 2015A Bonds Outstanding under the Resolution, and all fees, charges and expenses of the Trustee, and the Regents have been paid or provided for, and all other amounts payable hereunder have been paid, the Trustee shall pay to the University any amounts remaining in any fund established and held hereunder for the Series 2015A Bonds.

## ARTICLE IV

### PLAN OF REFUNDING

Section 4.1 Defeasance of Refunded Bonds. In accordance with the provisions of the Resolution, it is hereby found and determined that pursuant to the Escrow Agreement, moneys and Defeasance Securities permitted under the Act and under the Resolution, the principal and interest on which, when due, will provide moneys which shall be sufficient to pay, when due, the principal or redemption price or prepayment amount, if applicable, as provided therein, and interest due and to become due on the Refunded Bonds on and prior to the applicable redemption or prepayment dates or maturity thereof will have been deposited with the Escrow Agent, and that upon compliance with the provisions of the Resolution, as provided for in the Escrow Agreement, all Refunded Bonds shall be deemed to have been paid within the meaning and with the effect expressed in the Resolution. After all the Refunded Bonds shall have become due and payable upon maturity or pursuant to call for redemption, any investments remaining in the Escrow Account shall be liquidated and any proceeds of liquidation over and above the amount necessary to be retained for the payment of Refunded Bonds not yet presented for payment, including interest due and payable, shall be paid over to the Trustee for deposit into the Bond Fund. At or before the time when the Series 2015A Bonds are issued, the reserve fund for the Refunded Bonds may be terminated and the funds in said reserve fund for the Refunded Bonds will be deposited to the Escrow Account under the Escrow Agreement and used to defease the Refunded Bonds and the Regents or University are hereby authorized to take all other action needed to refund and redeem the Refunded Bonds. As contemplated by Section 12.1 of the Resolution, none of the Refunded Bonds are payable from amounts drawn under credit enhancement as provided in Section 57-231 of the Idaho Code.

Section 4.2 Redemption of Refunded Bonds The Refunded Bonds shall be irrevocably called for redemption pursuant to the Escrow Agreement, and notice of redemption shall be given as provided in the Escrow Agreement.

Section 4.3 Approval of Escrow Agreement; Deposits Into Escrow Account. The Escrow Agreement, in substantially the form presented at this meeting, with such changes, omissions, insertions and revisions as the Bursar shall approve, is hereby authorized, and the Bursar shall sign such Escrow Agreement, which signature shall evidence such approval. The Bursar is hereby authorized to do or perform all such acts as may be necessary or advisable to comply with the Escrow Agreement and to carry the same into effect.

## ARTICLE V

### REDEMPTION OF SERIES 2015A BONDS

Section 5.1 Redemption of Series 2015A Bonds.

(a) *Optional Redemption.* The Series 2015A Bonds may be subject to

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optional redemption if provided for in the Terms Certificate.

(b) *Mandatory Sinking Fund Redemption.* The Series 2015A Bonds may be subject to mandatory sinking fund redemption if provided for in the Terms Certificate.

Section 5.2 Selection of Series 2015A Bonds for Redemption. The principal amount and maturity of the Series 2015A Bonds to be redeemed shall be as specified by the University. If less than all of the Series 2015A Bonds of a maturity are called for redemption, the Trustee shall select the Series 2015A Bonds or any given portion thereof of such maturity to be redeemed in any manner that the Trustee deems fair and appropriate. For the purpose of any such selection the Trustee shall assign a separate number for each minimum Authorized Denomination of each Series 2015A Bond of such maturity of a denomination of more than such minimum; provided, that following any such selection, the portion of such Series 2015A Bond to remain Outstanding shall be in an Authorized Denomination. The Trustee shall promptly notify the University in writing of the numbers of the Series 2015A Bonds or portions thereof so selected for redemption. Notwithstanding the foregoing, if less than all of the Series 2015A Bonds of a maturity are to be redeemed at any time while the Series 2015A Bonds of such maturity are Book-Entry Bonds, selection of the Series 2015A Bonds to be redeemed shall be made in accordance with customary practices of DTC or any other applicable Securities Depository, as the case may be.

Section 5.3 Notice of Redemption.

(a) Unless waived by any Holder of the Series 2015A Bonds, the Trustee, for and on behalf of the University, shall give notice of the redemption of any Series 2015A Bond pursuant to the terms of the Resolution, including the following: by first class mail, postage prepaid, not less than thirty-five (35) days nor more than sixty (60) days prior to the redemption date (i) to the registered owner of such Series 2015A Bond at the address shown on the Bond Register on the date such notice is mailed and (ii) to one or more national information service that disseminate notices of redemption of obligations such as the Series 2015A Bonds. Each notice of redemption shall state the date of such notice, the Issue Date, the redemption date, the redemption price, the place of redemption (including the name and appropriate address or addresses of the Trustee) and, if less than all of the Series 2015A Bonds are to be redeemed, the distinctive certificate numbers of the Series 2015A Bonds to be redeemed and, in the case of Series 2015A Bonds to be redeemed in part only, the respective portions of the principal amount thereof to be redeemed. Each such notice shall also state that the interest on the Series 2015A Bonds designated for redemption shall cease to accrue from and after such redemption date and that on said date there will become due and payable on each of said Series 2015A Bonds the principal amount thereof to be redeemed, interest accrued thereon, if any, to the redemption date and the premium, if any, thereon (such premium to be specified) and shall require that such Series 2015A Bonds be then surrendered at the address or addresses of the Trustee specified in the redemption notice.

Failure to mail the notices required by this paragraph to any Holder of any Series 2015A Bonds designated for redemption, or any defect in any notice so mailed and shall not affect the validity of the proceedings for redemption of any other Series 2015A Bonds.

(b) With respect to any notice of redemption of Series 2015A Bonds by the University, unless at the time of giving such notice the Trustee shall hold moneys sufficient to pay the principal of, premium, if any, and interest to the redemption date on the Series 2015A Bonds to be redeemed, such notice shall state that such redemption shall be conditional upon the receipt by the Trustee on or prior to the date fixed for such redemption of funds sufficient to pay the principal of, and premium, if any, and interest on, such Series 2015A Bonds to be redeemed, and that if such funds shall not have been so received said notice shall be of no force and effect, Series 2015A Bonds shall not be subject to redemption on such date and the Series 2015A Bonds shall not be required to be redeemed on such date. In the event that such notice of redemption contains such a condition and such funds are not so received, the redemption shall not be made and the Trustee shall within a reasonable time thereafter give notice, to the persons and in the manner in which the notice of redemption was given, that such funds were not so received.

Section 5.4 Partial Redemption of Series 2015A Bonds. Upon surrender of any Series 2015A Bond redeemed in part only, the Trustee shall exchange the Series 2015A Bond redeemed for a new Series 2015A Bond of like tenor and in an Authorized Denomination without charge to the Holder in the principal amount of the portion of the Series 2015A Bond not redeemed. In the event of any partial redemption of a Series 2015A Bond which is registered in the name of the Nominee, DTC may elect to make a notation on the Series 2015A Bond certificate which reflects the date and amount of the reduction in principal amount of said Series 2015A Bond in lieu of surrendering the Series 2015A Bond certificate to the Trustee for exchange. The Regents, the Trustee and the University shall be fully released and discharged from all liability upon, and to the extent of, payment of the redemption price for any partial redemption and upon the taking of all other actions required hereunder in connection with such redemption.

Section 5.5 Effect of Redemption. Notice of redemption having been duly given as aforesaid, and funds for payment of the redemption price being held by the Trustee, the Series 2015A Bonds so called for redemption shall, on the redemption date designated in such notice, become due and payable at the redemption price specified in such notice, interest on the Series 2015A Bonds so called for redemption shall cease to accrue, said Series 2015A Bonds shall cease to be entitled to any lien, benefit or security under the Resolution, and the Holders of said Series 2015A Bonds shall have no rights in respect thereof except to receive payment (but only from the funds provided in connection with such redemption) of the redemption price thereof (including interest, if any, accrued to the redemption date), without interest accruing on any funds held after the redemption date to pay such redemption price.

All Series 2015A Bonds fully redeemed pursuant to the provisions of this Article V shall upon surrender thereof be cancelled and destroyed by the Trustee in accordance with its record retention policies then in effect.

## ARTICLE VI

### MISCELLANEOUS

Section 6.1 Governing Law. By the acceptance of the Series 2015A Bonds, the Holders of the Series 2015A Bonds shall be deemed to agree that the rights of the Holders of the Series 2015A Bonds shall be governed by the laws of the State of Idaho.

Section 6.2 Partial Invalidity. If any one or more of the covenants or agreements, or portions thereof, provided in this Supplemental Resolution on the part of the University (or of the Trustee or of any paying agent) to be performed should be contrary to law, then such covenant or covenants, such agreement or agreements, or such portions thereof, shall be null and void and shall be deemed separable from the remaining covenants and agreements or portions thereof and shall in no way affect the validity of this Supplemental Resolution or of the Series 2015A Bonds; but the Holders of the Series 2015A Bonds shall retain all the rights and benefits accorded to them under the Act or any other applicable provisions of law.

Section 6.3 Beneficiaries. This Supplemental Resolution shall be deemed to be a contract between the Regents, the Trustee, and the Holders of the Series 2015A Bonds.

Section 6.4 Savings Clause. Except as amended by this Supplemental Resolution, the Resolution shall remain in full force and effect.

Section 6.5 Conflicting Resolutions. All resolutions or parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed.

Section 6.6 Perfection of Security Interest.

(a) The Resolution creates a valid and binding pledge and assignment of security interest in all of the Pledged Revenues under the Resolution as security for payment of the Series 2015A Bonds, enforceable by the Trustee in accordance with the terms thereof.

(b) Under the laws of the State of Idaho, such pledge and assignment and security interest is automatically perfected by Section 57-234 Idaho Code, as amended, and is and shall have priority as against all parties having claims of any kind in tort, contract, or otherwise hereafter imposed on the Pledged Revenues.

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ADOPTED AND APPROVED this \_\_\_\_ day of December, 2014.

THE REGENTS OF THE UNIVERSITY  
OF IDAHO

[SEAL]

By: \_\_\_\_\_  
President

By: \_\_\_\_\_  
Bursar

ATTEST:

By: \_\_\_\_\_  
Secretary

EXHIBIT A

## FORM OF SERIES 2015A BOND

Unless this certificate is presented by an authorized representative of The Depository Trust Company (55 Water Street, New York, New York) to the issuer or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of The Depository Trust Company and any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.

R-\_\_\_\_\_ \$\_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF IDAHO  
UNIVERSITY OF IDAHO  
GENERAL REVENUE REFUNDING BONDS  
SERIES 2015A

Interest Rate      Maturity Date      Dated Date      CUSIP

Registered Owner:    CEDE & CO.

Principal Amount:       \_\_\_\_\_ DOLLARS\*\*\*\*\*

KNOW ALL MEN BY THESE PRESENTS that the University of Idaho, a body politic and corporate and an institution of higher education of the State of Idaho (the "University"), for value received, hereby promises to pay, from the Bond Fund hereinafter defined, to the registered owner identified above, or registered assigns, on the maturity date specified above, the principal sum indicated above, and to pay interest thereon from the Bond Fund from the dated date hereof, or the most recent date to which interest has been paid or duly provided for, at the rate per annum specified above, payable on each Payment Date, until the date of maturity or prior redemption of this Bond.

This Bond is an obligation of the University payable solely in accordance with the terms hereof and is not an obligation, general, special, or otherwise of the State of Idaho, does not constitute a debt, legal, moral, or otherwise, of the State of Idaho, and is not enforceable against the State, nor shall payment hereof be enforceable out of any funds of the University other than the revenues, fees, and charges pledged thereto in the Resolution (defined herein). Pursuant to the Resolution, certain revenues have been pledged and will be set aside into the Bond Fund (as defined in the Resolution) to provide for the prompt payment of the principal of, interest on, and redemption price of the Bonds of which this Bond is a part. For a more particular description of the Bond Fund, the

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revenues to be deposited therein, and the nature and extent of the security afforded thereby, reference is made to the provisions of the Resolution.

The principal of, premium, if any, and interest on this Bond are payable in lawful money of the United States of America to the registered owner hereof whose name and address shall appear on the registration books of the University (the "Bond Register") maintained by the Corporate Trust Department of Wells Fargo Bank, N. A. (the "Trustee"). Interest shall be paid to the registered owner whose name appears on the Bond Register on the fifteenth day of the calendar month next preceding the interest payment date, at the address appearing on the Bond Register, and shall be paid by check or draft of the Trustee mailed to such registered owner on the due date at the address appearing on the Bond Register, or at such other address as may be furnished in writing by such registered owner to the Trustee. Principal shall be paid to the registered owner upon presentation and surrender of this Bond at the principal corporate trust office of the Trustee, on or after the date of maturity or prior redemption.

This Bond is one of a duly authorized issue of Bonds of like date, tenor, and effect, except for variations required to state numbers, denominations, rates of interest, and dates of maturity, aggregating \$\_\_\_\_\_ in principal amount. The Bonds are issued pursuant to and in full compliance with the Constitution and statutes of the State of Idaho, particularly Chapter 38, Title 33, Idaho Code, and proceedings duly adopted and authorized by the Regents on behalf of the University, more particularly the Resolution adopted by the Regents on November 22, 1991, as previously amended, supplemented, and restated from time to time, including with respect to the Bonds by a Supplemental Resolution adopted by the Regents on December 18, 2014, authorizing the issuance of the Bonds (collectively, the "Resolution"). All capitalized terms used but not herein defined shall have the meanings ascribed to them in the Resolution. This Bond is not secured by the Debt Service Reserve Account previously created under the Resolution.

This Bond is one of the General Revenue Refunding Bonds, Series 2015A, of the University (the "Series 2015A Bonds") issued under the provisions of Chapter 38, Title 33, Idaho Code, for the purpose of providing funds with which to (i) refund certain outstanding bonds of the University (the "Refunded Bonds") and (ii) pay issuance expenses properly incident thereto. The principal of, interest on, and redemption price of the Series 2015A Bonds are payable from revenues and funds of the University pledged therefor and certain other fees and revenues, as more particularly set forth in the Resolution.

The Series 2015A Bonds are issuable as fully registered bonds without coupons in Authorized Denominations of \$5,000 or any integral multiple in excess thereof. Subject to the limitations and upon payment of the charges, if any, provided in the Resolution, Bonds may be exchanged at the Principal Office of the Trustee for a like aggregate principal amount of Series 2015A Bonds of other Authorized Denominations.

This Bond is transferable by the Holder hereof, in person, or by its attorney duly authorized in writing, at the Principal Office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges provided in the Resolution,

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and upon surrender and cancellation of this Series 2015A Bond. Upon such transfer a new fully registered Bond or Bonds of like tenor in Authorized Denominations, for the same aggregate principal amount, will be issued to the transferee in exchange herefor.

Each Bond shall bear interest from the Payment Date to which interest has been paid as of the date on which it is authenticated or, if it is authenticated on or before the Record Date for the first Payment Date, from the Issue Date; provided, however, that if, at the time of authentication of any Bond, interest is in default on Outstanding Bonds, such Bond shall bear interest from the Payment Date to which interest has previously been paid or made available for payment on the Outstanding Bonds. Both the principal of and premium, if any, on the Series 2015A Bonds shall be payable upon surrender thereof at the Principal Office of the Trustee.

Interest on the Series 2015A Bonds will be paid on each Payment Date provided that if any Payment Date is not a Business Day, such interest shall be paid as provided above on the next succeeding Business Day with the same effect as if made on the day such payment was due. Interest on the Series 2015A Bonds shall be computed upon the basis of a 360-day year, consisting of twelve 30-day months. Interest on the Series 2015A Bonds shall bear interest from and including the Issue Date until payment of the principal or redemption price thereof has been made or provided for on the due date thereof, whether at maturity, upon redemption or otherwise.

[The Series 2015A Bonds are subject to redemption prior to their maturity date, as described in the Resolution.]

[Mandatory Sinking Fund Redemption provisions, if applicable]

**\*\*The Series 2015A Bonds are initially issued in the form of a separate single certificated fully registered Bond for each maturity and registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC").\*\***

**\*\*Unless this Bond is presented by an Authorized Officer of DTC to the University or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an Authorized Officer of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an Authorized Officer of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.\*\***

**\*\*Upon any partial redemption of this Bond, Cede & Co., in its discretion, may request the Trustee to authenticate a new Series 2015A Bond or shall make an appropriate notation on this Bond indicating the date and amount of prepayment, except in the case of final maturity, in which case this Bond must be presented to the Trustee prior to payment.\*\***

**\*\*The Series 2015A Bonds shall not be transferable or exchangeable except as set forth in the Resolution.\*\***

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This Bond is transferable by the registered owner hereof in person or by his attorney duly authorized in writing upon presentation and surrender of this Bond at the principal corporate trust office of the Trustee. Upon such transfer, a new Bond, of the same denomination, maturity, and interest rate will be issued to the transferee in exchange therefor.

Reference is hereby made to the Resolution for the covenants and declarations of the University and other terms and conditions under which this Bond and the Series 2015A Bonds of this issue have been issued. The covenants contained herein and in the Resolution may be discharged by making provisions at any time for the payment of the principal of and interest on this Bond in the manner provided in the Resolution.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the Certificate of Authentication hereon shall have been manually signed by the Trustee.

IT IS HEREBY CERTIFIED AND DECLARED that all acts, conditions, and things required by the Constitution and statutes of the State of Idaho to exist, to have happened, been done, and performed precedent to and in the issuance of this Bond have happened, been done, and performed, and that the issuance of this Bond and the Series 2015A Bonds of this issue does not violate any Constitutional, statutory, or other limitation upon the amount of bonded indebtedness that the University may incur.



IN WITNESS WHEREOF, the Board of Regents of the University of Idaho (the "Regents"), has caused this Bond to be executed by the manual or facsimile signature of the President of the Regents and of the Bursar of the University and attested by the manual or facsimile signature of the Secretary of the Regents, and a facsimile or original of the official seal of the University to be imprinted hereon, as of the dated date set forth above.

THE REGENTS OF THE UNIVERSITY  
OF IDAHO

By: \_\_\_\_\_  
President

COUNTERSIGNED:

(SEAL)

By: \_\_\_\_\_  
Bursar

ATTEST:

By: \_\_\_\_\_  
Secretary

**CERTIFICATE OF AUTHENTICATION**

This Bond is one of the General Revenue Refunding Bonds, Series 2015A, of the University of Idaho, described in the within-mentioned Resolution.

WELLS FARGO BANK, N.A., as Trustee

By: \_\_\_\_\_  
Authorized Signature

Date of Authentication: \_\_\_\_\_

**SUPPLEMENTAL RESOLUTION – PAGE 21**

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## ASSIGNMENT

FOR VALUE RECEIVED, \_\_\_\_\_,  
the undersigned sells, assigns and transfers unto:

\_\_\_\_\_  
(Social Security or Other Identifying Number of Assignee)

\_\_\_\_\_  
(Please Print or Typewrite Name and Address of Assignee)

the within Bond and hereby irrevocably constitutes and appoints  
\_\_\_\_\_ of \_\_\_\_\_ to transfer the said  
bond on the books kept for registration thereof with full power of substitution in the  
premises.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

NOTICE: The signature on this assignment must correspond with the name(s) of the Registered owner as it appears upon the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

SIGNATURE GUARANTEED:

\_\_\_\_\_  
NOTICE: Signature(s) must be guaranteed by a member firm of the New York Stock Exchange or a commercial bank or trust company and must correspond with the name as it appears upon the face of the within bond in every particular, without alteration or enlargement or any change whatever.

SUPPLEMENTAL RESOLUTION – PAGE 22

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EXHIBIT B

PARAMETERS

SERIES 2015A BONDS:

The Purchase Price for the Series 2015A Bonds shall not be less than the aggregate par amount thereof.

Principal amount not to exceed \$22,285,000.

Effective True Interest Cost (TIC) not to exceed 4.000% per annum.

Underwriter's Discount or fee not to exceed 0.525% of the principal amount of the Bonds plus any reoffering premium, as more fully described in the Bond Purchase Agreement.

Final Maturity not to exceed 12 years from date of issuance.

The Series 2015A Bonds may be made non-callable or subject to redemption as determined at the time of the sale thereof.

EXHIBIT C

## TERMS CERTIFICATE

In connection with a Supplemental Resolution of the Regents (the “Regents”) of the University of Idaho adopted on December \_\_, 2014 (the “2014 Supplemental Resolution”) authorizing the issuance and sale of the Regent’s General Revenue Refunding Bonds, Series 2015A (the “Series 2015A Bonds”), the undersigned hereby executes and delivers this Terms Certificate (as such term is defined in the 2014 Supplemental Resolution) specifying certain terms of the Series 2015A Bonds:

## Series 2015A Bonds:

- a. Principal amount:
- b. Dated Date: January \_\_, 2015
- c. Date of Delivery: January \_\_, 2015
- d. Closing Date: January \_\_, 2015, or such other date agreed upon by the Underwriters and the University
- e. Underwriter’s discount or fee of \$\_\_\_\_\_ (\$5.25 per \$1,000 of par amount plus any reoffering premium, as more fully described in Bond Purchase Agreement)
- f. Purchase Price: \_\_\_\_\_
- g. Initial Payment Date: October 1, 2015
- h. Maturity Date(s) and Interest Rate(s):

Maturity Date (April 1)	Principal <u>Amount</u> (to come)___	Interest Rate ____%
2017	_____	_____
2018	_____	_____
2019	_____	_____
2020	_____	_____
2021	_____	_____
2022	_____	_____
2023	_____	_____
2024	_____	_____
2025	_____	_____
2026	_____	_____

- i. Optional Redemption: The Series 2015A Bonds are [not] subject to optional redemption [as follows:

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The Series 2015A Bonds maturing on or before April 1, 20\_\_\_\_, shall not be subject to optional call or redemption prior to their stated dates of maturity. On any day on or after [April 1, 20\_\_\_\_], at the election of the University, the Series 2015A Bonds maturing after [April 1, 20\_\_\_\_], shall be subject to redemption, in whole or in part, in maturities selected by the University and within each maturity as selected by lot by the Trustee, at par, plus accrued interest to the redemption date.]

j. Sources and Uses of Series 2015A Bond proceeds:

**SOURCES OF FUNDS:** .....Amounts

Series 2015A Bonds Par Amount .....\$ \_\_\_\_\_

Net Original Issue Premium..... \_\_\_\_\_

Reserve Fund from 2005A Bonds..... \_\_\_\_\_

**TOTAL SOURCES OF FUNDS** .....\$ \_\_\_\_\_

**USES OF FUNDS:**

Deposit to the Series 2015A Escrow Account..... \_\_\_\_\_

Underwriter's Discount..... \_\_\_\_\_

For payment of Series 2015A Costs of issuance <sup>(1)</sup>..... \_\_\_\_\_

**TOTAL USES OF FUNDS** .....\$ \_\_\_\_\_

<sup>(1)</sup> Includes Trustee's fee, rating agencies' fees, printing costs, legal fees and other fees and expenses.

k. Refunded Bonds: Outstanding Series 2005A Bonds

l. Redemption/Refunding/Defeasance instructions and authorization of an escrow agreement: Escrow Agreement to be entered into for the refunding of the Series 2005A Bonds

Executed and delivered this January, 2015 on behalf of the Regents pursuant to the 2014 Supplemental Resolution.

THE REGENTS OF THE UNIVERSITY  
OF IDAHO

By: \_\_\_\_\_  
Bursar

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**SUPPLEMENTAL RESOLUTION – PAGE 27**

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**BOND PURCHASE AGREEMENT**

January \_\_, 2015

The Regents of the University of Idaho  
 University of Idaho  
 Administration Building, Room 211  
 851 Campus Drive  
 Moscow, Idaho 83844-3168

\$ \_\_\_\_\_  
**THE REGENTS OF THE UNIVERSITY OF IDAHO**  
**General Revenue Refunding Bonds**  
**Series 2015A**

Ladies and Gentlemen:

The undersigned, George K. Baum & Company (the "**Underwriter**"), offers to enter into this Bond Purchase Agreement (this "**Bond Purchase Agreement**") with the Regents of the University of Idaho (the "**Regents**") which, upon your acceptance of this offer, will be binding upon you and upon the Underwriter. *Terms used herein that are not otherwise defined herein shall have the same meanings assigned to them in the Resolution (as hereinafter defined).*

This offer is made subject to your acceptance of this Bond Purchase Agreement on or before 5:00 p.m. Pacific Time, on January \_\_, 2015, and, if not so accepted by the Regents, will be subject to withdrawal by the Underwriter upon notice delivered to the Regents at its address set forth above, at any time prior to the acceptance hereof by the Regents. This offer is also subject to the provisions included in this Bond Purchase Agreement.

1. Purchase and Sale of the Series 2015A Bonds. Upon the terms and conditions and in reliance upon the respective representations, warranties and covenants herein, the Underwriter hereby agrees to purchase from the Regents, and the Regents hereby agree to sell and deliver to the Underwriter, all (but not less than all) of the Regents' General Revenue Refunding Bonds, Series 2015A (the "**Series 2015A Bonds**"), at an aggregate purchase price of \$\_\_\_\_\_ (the "**Purchase Price**"), representing (i) the \$\_\_\_\_\_ principal amount of the Series 2015A Bonds, plus (ii) net original issue premium of \$\_\_\_\_\_, and minus (iii) an Underwriter's discount of \$\_\_\_\_\_. Payment of the Purchase Price for the Series 2015A Bonds shall be made through wire transfer of immediately available federal funds to the Trustee for the account of the Regents at or prior to the Closing (as defined herein), and, upon satisfaction of the conditions for the issuance and sale of the Series 2015A Bonds set forth herein, the Series 2015A Bonds shall be released for delivery no later than the Closing (as defined herein).

The Regents acknowledge and agree that (a) the purchase and sale of the Series 2015A Bonds pursuant to this Bond Purchase Agreement is an arm's length commercial transaction between the University and the Underwriter; (b) in connection with such transaction, the Underwriter is acting solely as a principal and not as an agency or a fiduciary of the Regents; (c) the Underwriter has not assumed (individually or collectively) a fiduciary responsibility in favor of the Regents with respect to the offering of the Series 2015A Bonds or the process leading hereto (whether or not the Underwriter, or any affiliate of the Underwriter, has advised or is currently advising the University on other matters) or any other



obligation to the University except the obligations expressly set forth in this Bond Purchase Agreement; and (d) the Regents have consulted with its own legal and financial advisors to the extent it deemed appropriate in connection with the offering of the Series 2015A Bonds. Furthermore, the Regents have received and acknowledged the letter dated \_\_\_\_\_, 2014 delivered by the Underwriter. The Regents have retained Piper Jaffray & Company as its Independent Registered Municipal Advisor in this transaction.

The Series 2015A Bonds will be issued in accordance with the provisions of the Educational Institutions Act, constituting chapter 38, Title 33, Idaho Code and Chapter 5, Title 57, Idaho Code (the "**Act**"), the Constitution of the State of Idaho (the "**State**"), and pursuant to a Supplemental Resolution with respect to the Series 2015A Bonds adopted by the Regents on December 18, 2014 (the "**2015A Supplemental Resolution**") supplementing that certain Resolution adopted by the Regents on November 22, 1991 (as subsequently amended and supplemented, the "**Original Resolution**" and, together with the 2015A Supplemental Resolution, referred to herein as the "**Resolution**"). The Series 2015A Bonds shall mature on April 1 in each of the years and amounts, and bear interest at the rates, all as set forth on Schedule 1 hereto and subject to further terms as are reflected in the Official Statement (as hereinafter defined).

The Regents will apply the proceeds of the Series 2015A Bonds, together with other available funds, to (i) refund the Regents' General Revenue Refunding Bonds, Series 2005A (the "**Refunding Project**") and (ii) pay costs of issuance associated with the Series 2015A Bonds.

2. Authority of the Underwriter. The Underwriter hereby represents and warrants that it has full corporate power and authority to execute and deliver this Bond Purchase Agreement and to perform all acts on its part herein required.

3. Public Offering of the Series 2015A Bonds. The Underwriter agrees to make a bona fide public offering of the Series 2015A Bonds at not in excess of the initial public offering price therefor as set forth on the inside cover page of the final Official Statement, as defined below. In connection with the public offering of the Series 2015A Bonds, the Regents shall cause the preparation of the Official Statement, with completion of information relating to the interest rate, selling compensation, aggregate principal amount, delivery date, ratings and other terms of the Series 2015A Bonds depending on such matters as acceptable to the Regents and the Underwriter to reflect such terms as contemplated by this Bond Purchase Agreement and with such other additions, deletions and revisions as shall be acceptable to the Regents and the Underwriter. Copies of the Official Statement, signed by an authorized representative of the Regents will be delivered to the Underwriter within seven (7) business days of the date of this Bond Purchase Agreement, in sufficient quantity as may be reasonably requested by the Underwriter in order for the Underwriter to comply with the rules of the Municipal Securities Rulemaking Board (the "**MSRB**"). The Regents hereby authorize the use by the Underwriter of the Official Statement in connection with the offering of the Series 2015A Bonds to the public.

The Underwriter reserves the right (a) to over-allot or effect transactions that stabilize or maintain the market price of the Series 2015A Bonds at a level above that which might otherwise prevail in the open market, and (b) to discontinue such stabilizing, if commenced, at any time. A public offering shall include an offering to a representative number of institutional investors or registered investment companies, regardless of the number of such investors to which the Series 2015A Bonds are sold.

Following the Closing Date, the Underwriter shall submit electronically a copy of the Official Statement to the MSRB at its Electronic Municipal Market Access system in accordance with the rules of the MSRB.

The Regents agree that if, through the 25th day after the Closing Date, the Regents become aware of the occurrence of an event that might cause the Official Statement to contain an untrue statement of a material fact or to omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, to notify the Underwriter, and, if in the opinion of the Underwriter such event requires the preparation and distribution of a supplement or an amendment to the Official Statement, the Regents, at their expense, at the request of the Underwriter, shall cause such a supplement or an amendment, satisfactory to the Underwriter, to be prepared and delivered to the Underwriter in such quantities as the Underwriter may reasonably request.

4. Representations, Warranties and Agreements by the Regents. In order to induce the Underwriter to enter into this Bond Purchase Agreement, and in consideration of the foregoing and of the execution and delivery of this Bond Purchase Agreement by the Underwriter, the Regents represent and warrant to and covenant with the Underwriter that, as of the date hereof and on and as of the date of the Closing:

(a) The Regents are a body politic and corporate organized and existing under and pursuant to the Constitution and laws of the State, have full legal right, power and authority pursuant to the Constitution, the Act and the Resolution to consummate all transactions contemplated by (i) this Bond Purchase Agreement, the Resolution, the Continuing Disclosure Agreement dated as of \_\_\_\_\_, 2015 between the Regents and the Trustee, as dissemination agent, the Escrow Agreement between the Regents and the Trustee, as Escrow Agent (the "**Escrow Agreement**" and, collectively, the "**Regents' Documents**"), the Series 2015A Bonds and any and all other agreements and instruments relating to the issuance and sale of the Series 2015A Bonds; and (ii) the Preliminary Official Statement relating to the Series 2015A Bonds, including all appendices and supplements thereto, dated January \_\_, 2015 (the "**Preliminary Official Statement**") and the final Official Statement, including all appendices thereto, dated as of the date hereof (the final Official Statement, including all appendices, supplements and amendments thereto, collectively is referred to as the "**Official Statement**"); to enter into the Regents' Documents; to issue the Series 2015A Bonds; to approve the Official Statement; to carry out all of its obligations thereunder and to comply with the terms and conditions hereof and thereof applicable to the Regents.

(b) The Regents have duly adopted the Resolution and have duly authorized all necessary action to be taken by them for: (i) the issuance and sale of the Series 2015A Bonds upon the terms and conditions set forth herein, in the Official Statement, and in the Resolution; (ii) the approval and execution, as relevant, of each Regents' Document and the Series 2015A Bonds; and (iii) the execution, delivery or receipt of and performance of the Regents' obligations under each Regents' Document and the Series 2015A Bonds, and any and all such other agreements and documents as may be required to be executed, delivered or received by the Regents in order to carry out, effectuate and consummate the transactions contemplated herein and therein.

(c) The Regents have previously provided the Underwriter with the Preliminary Official Statement, and as of its date, the Preliminary Official Statement has been "deemed final" by the Regents for purposes of Rule 15c2-12 promulgated under the Securities Exchange Act of 1934, as amended (the "**Rule**").

(d) Except as disclosed in the Official Statement, the Regents have never failed to comply in all material respects with any continuing disclosure undertaking with regard to the Rule to provide annual reports or notices of material events specified in the Rule. The University

has agreed to establish appropriate policies and procedures and conduct training regarding its continuing disclosure obligations promptly following delivery of the Series 2015A Bonds.

(e) The Regents have duly approved and authorized the execution, delivery and distribution of the Official Statement.

(f) The information contained in the Official Statement with respect to forward-looking statements and in the sections thereof titled "INTRODUCTION – The Regents and the University of Idaho" and "– Purpose of the Series 2015A Bonds," "SECURITY FOR THE SERIES 2015A BONDS," "PLAN OF FINANCE – The Refunding Project," "HISTORICAL PLEDGED REVENUES," "THE UNIVERSITY," "FINANCIAL OPERATIONS OF THE UNIVERSITY," "UNIVERSITY GOVERNANCE AND ADMINISTRATION," "CONTINUING DISCLOSURE" and "LITIGATION" and in Appendix A (collectively, all such sections and appendices are herein referred to as the "**Relevant Portions**") is, and at the Closing will be, true and correct in all material respects and does not, and at the Closing will not, contain any untrue or misleading statement of a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(g) At the time of the Regents' acceptance hereof and (unless an event occurs of the nature described in the last paragraph of Section 3 hereof) at all times subsequent thereto during the period up to and including twenty-five (25) days after the Closing Date, the information contained in the Relevant Portions of the Official Statement does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(h) If the information contained in the Relevant Portions of the Official Statement is supplemented or amended pursuant to the last paragraph of Section 3 hereof, at the time of each supplement or amendment thereto and (unless subsequently again supplemented or amended pursuant to such paragraph) at all times subsequent thereto during the period up to and including twenty-five (25) days after the Closing Date, the information contained in the foregoing sections of the Official Statement, as so supplemented or amended, will not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(i) Neither the execution and delivery of any Regents' Document, the Series 2015A Bonds, nor the consummation of the transactions contemplated herein or therein or the compliance with the provisions hereof or thereof, will conflict with, or constitute on the part of the Regents a violation of, or a breach of or default under, (i) any indenture, mortgage, commitment, note or other agreement or instrument to which the Regents is a party or by which it is bound, or (ii) any existing law, statute, rule, regulation (other than any state blue sky law) or resolution or judgment, order or decree of any court or governmental agency or body having jurisdiction over the Regents or any of its activities or properties. All consents, approvals, certificates of need, authorizations and orders of governmental or regulatory authorities (other than any state blue sky authorities) which are required for the execution and delivery of, consummation of the transactions contemplated by, and compliance with the provisions of, the Regents' Documents and the Series 2015A Bonds by the Regents have been obtained or will be obtained when required.

(j) Except as is specifically disclosed in the Official Statement, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board

or body, pending or, to the knowledge of the Regents, threatened against or affecting (i) the financial condition of the Regents, the University, the Refunding Project, the application of the Pledged Revenues to payment of the Series 2015A Bonds or the operation by the Regents or the University of its properties, or (ii) the corporate existence of the Regents, the offices held by the members of the Regents and officers of the University and their respective rights or powers, their legal existence, or the actions taken or contemplated to be taken by them, or (iii) the transactions contemplated in the Regents' Documents or the Series 2015A Bonds, or (iv) the validity or enforceability in accordance with their respective terms of the Series 2015A Bonds, any Regents' Document or any material agreement or instrument by which the Regents, the University or their respective properties is or may be bound, and, to the knowledge of the Regents, is there any basis therefor wherein an unfavorable decision, ruling or finding would materially adversely affect any of the foregoing described in clauses (i) through (iv).

(k) The Regents will not take or omit to take any action which will in any way cause or result in the proceeds of the sale of the Series 2015A Bonds being applied in a manner other than as provided in the Resolution or as described in the Official Statement.

(l) The Regents have not been at any time in default as to principal or interest with respect to any obligation issued by or guaranteed by the Regents or with respect to which the Regents are an obligor.

(m) The audited financial statements of the University for the periods ended June 30, 2014 and June 30, 2013 are a fair presentation of the financial position of the University, the results of the University's operations and the University's changes in its net assets for the periods specified as of the dates indicated.

(n) Except as described in the Preliminary Official Statement, since June 30, 2014, there has been no material adverse change in the condition, financial or otherwise, of the University from that set forth in the audited financial statements as of and for the period ended that date; and except as described in the Preliminary Official Statement, the University, since June 30, 2014, has not incurred any material liabilities, directly or indirectly, except in the ordinary course of the University's operations.

(o) Between the date of this Agreement and the date of the Closing, except as contemplated by the Official Statement, the Regents will not incur and will not cause the University to incur any material liabilities, direct or contingent, or enter into any material transaction, in either case other than in the ordinary course of business.

(p) As of the date of this Bond Purchase Agreement, no event of default has occurred and is continuing and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute an event of default under any instrument to which the Regents or the University is a party and which is material to the business or operations of the Regents or the University.

(q) The Regents agree to furnish or cause to be furnished such information, execute or cause to be executed such instruments and take such other action in cooperation with Underwriter's Counsel as it may reasonably request (i) in any endeavor to qualify the Series 2015A Bonds for offering and sale under the securities or "Blue Sky" laws or regulations of such jurisdictions of the United States of America as the Underwriter may request, (ii) for the application for exemption from such qualification, (iii) for the determination of the Series 2015A Bonds' eligibility for investment under the laws of such jurisdictions as the Underwriter

designates and (iv) to provide for the continuance of such qualifications or exemptions in effect for so long as required for distribution or marketing of the Series 2015A Bonds, but not to exceed six (6) months after the date of Closing; provided, however, that the Regents shall not be required to qualify to do business in any jurisdiction where it is not now so qualified, or to take any such action which would subject it to general service of process in any jurisdiction where it is not now so subject.

(r) The Regents will comply and will use its best efforts to insure compliance with the applicable representations, warranties, covenants and obligations of the Regents contained in this Bond Purchase Agreement.

(s) Any certificate signed by any officer of the Regents or the University and delivered to the Underwriter shall be deemed a representation and warranty by the Regents to the Underwriter as to the truth of the statements therein contained

5. Closing. At 9 a.m., Pacific Time, on \_\_\_\_\_, 2015, or at such other time and/or date as shall have been mutually agreed upon by the Regents and the Underwriter (the "**Closing Date**"), the Regents will deliver, or cause to be delivered, to the Underwriter through the facilities of DTC the Series 2015A Bonds in definitive form duly executed by the Regents and authenticated by the Wells Fargo Bank, N.A., as Trustee in accordance with the Resolution, by delivering one fully registered Bond for each maturity of the Series 2015A Bonds in the principal amount of the related maturity of the Series 2015A Bonds, registered in the name of Cede & Co., as nominee of DTC, to the Trustee as custodian for DTC; and the Underwriter will accept such delivery of the Series 2015A Bonds and pay the Purchase Price of the Series 2015A Bonds to the Trustee for the account of the Regents by wire transfer or other direct transfer of immediately available funds payable to the order of the Trustee.

The activities relating to the final execution and delivery of the Series 2015A Bonds and the final execution and delivery of the Regents' Documents and the certificates, opinions and other instruments as described in Section 7 of this Bond Purchase Agreement shall occur at the offices of Skinner Fawcett LLP, Boise, Idaho or at such other location which shall be mutually agreed upon by the Regents and the Underwriter. The payment of the Purchase Price for the Series 2015A Bonds and simultaneous delivery of the Series 2015A Bonds to the Underwriter is herein referred to as the "**Closing**."

The Series 2015A Bonds will be made available for inspection by the Underwriter, at such place in Boise, Idaho as the Underwriter and the Trustee shall agree, not less than 24 hours prior to the Closing. The definitive Series 2015A Bonds shall bear proper CUSIP numbers (provided, however, that neither the printing of the wrong CUSIP number on any Series 2015A Bond nor the failure to print a CUSIP number thereon shall constitute cause to refuse to accept delivery of any Series 2015A Bond).

6. Termination. The Underwriter shall have the right to terminate its obligations hereunder by notice given to the Regents prior to delivery of and payment for the Series 2015A Bonds, if at any time prior to such time:

(a) Legislation not yet introduced in Congress shall be enacted or actively considered for enactment by the Congress, or recommended by the President of the United States of America to the Congress for passage, or favorably reported for passage to either House of the Congress by any committee of such House to which such legislation has been referred for consideration, a decision by a court of the United States of America or the United States Tax Court shall be rendered, or a ruling, regulation (proposed, temporary or final) or Official Statement by or on behalf of the Treasury Department of the United States of America, the Internal Revenue Service or other agency or department of the United States of America shall be

made or proposed to be made which has the purpose or effect, directly or indirectly, of imposing federal income taxes upon interest on the Series 2015A Bonds under the Internal Revenue Code of 1986, as amended (the "**Code**"); or

(b) Any other action or event shall have transpired which has the purpose or effect, directly or indirectly, of materially adversely affecting the federal income tax consequences of any of the transactions contemplated in connection herewith or contemplated by the Official Statement, and, in the reasonable judgment of the Underwriter, materially adversely affects the market for the Series 2015A Bonds or the sale, at the contemplated offering prices (or yields), by the Regents, of the Series 2015A Bonds; or

(c) Legislation shall be enacted, or actively considered for enactment by the Congress, with an effective date on or prior to the date of Closing, or a decision by a court of the United States of America shall be rendered, or a ruling or regulation by the Securities and Exchange Commission (the "**SEC**") or other governmental agency having jurisdiction over the subject matter shall be made, the effect of which is that (i) the Series 2015A Bonds are not exempt from the registration, qualification or other requirements of the Securities Act of 1933, as amended and as then in effect, or the Securities Exchange Act of 1934, as amended and as then in effect, or (ii) the Resolution is not exempt from the registration, qualification or other requirements of the Trust Indenture Act of 1939, as amended and as then in effect; or

(d) A stop order, ruling or regulation by the SEC shall be issued or made, the effect of which is that the issuance, offering or sale of the Series 2015A Bonds, as contemplated herein or in the Official Statement, is in violation of any provision of the Securities Act of 1933, as amended and as then in effect, the Securities Exchange Act of 1934, as amended and as then in effect, or the Trust Indenture Act of 1939, as amended and as then in effect; or

(e) There shall exist any fact or there shall occur any event which, in the reasonable judgment of the Underwriter, either (i) makes untrue or incorrect in any material respect any statement or information contained in the Official Statement or (ii) is not reflected in the Official Statement but should be reflected therein in order to make the statements and information contained therein not misleading in any material respect and, in either such event the Regents refuse to permit the Official Statement to be supplemented to correct or supply such statement or information, or the Official Statement as so corrected or supplemented is such as, in the judgment of the Underwriter, would materially adversely affect the market for the Series 2015A Bonds or the sale, at the contemplated offering prices (or yields), by the Regents of the Series 2015A Bonds; or

(f) There shall have occurred any outbreak or escalation of hostilities, declaration by the United States of a national emergency or war or other calamity or crisis the effect of which on financial markets is such as to make it, in the reasonable judgment of the Underwriter, impractical or inadvisable to proceed with the offering or delivery of the Series 2015A Bonds as contemplated by the final Official Statement (exclusive of any amendment or supplement thereto); or

(g) Trading in the Regents' outstanding securities shall have been suspended by the Securities and Exchange Commission or trading in securities generally on the New York Stock Exchange shall have been suspended or limited or minimum prices shall have been established on such Exchange; or

(h) A banking moratorium shall have been declared either by federal or New York State authorities; or

(i) There occurs any material adverse change in the affairs, operation or financial condition of the University, except as set forth or contemplated in the Official Statement, the effect of which is, in the reasonable judgment of the Underwriter, to materially adversely affect the market for the Series 2015A Bonds or the sale, at the contemplated prices (or yields) by the Regents of the Series 2015A Bonds; or

(j) The Official Statement is not executed, approved and delivered in accordance with the terms hereof; or

(k) In the reasonable judgment of the Underwriter, the market price of the Series 2015A Bonds, or the market price generally of obligations of the general character of the Series 2015A Bonds, would be adversely affected because: (i) additional material restrictions not in force as of the date hereof shall have been imposed upon trading in securities generally by any governmental authority or by any national securities exchange, or (ii) the New York Stock Exchange or other national securities exchange, or any governmental authority, shall impose, as to the Series 2015A Bonds or similar obligations, any material restrictions not now in force, or increase materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of, underwriters; or

(l) Any litigation shall be instituted, pending or threatened to restrain or enjoin the issuance, sale or delivery of the Series 2015A Bonds or in any way contesting or affecting any authority for or the validity of the Series 2015A Bonds, the Regents' Documents, or the existence or powers of the Regents or any of the transactions described herein or in the Official Statement; or

(m) Any underlying rating on the Series 2015A Bonds or other Bonds of the Regents which are secured by a pledge of the Pledged Revenues on a parity with the pledge of the Series 2015A Bonds thereon is reduced or withdrawn or placed on credit watch with negative outlook by any major credit rating agency.

7. Conditions to Purchase. The Underwriter has executed and delivered this Bond Purchase Agreement in reliance upon the representations, warranties and obligations of the Regents contained herein. Accordingly, the Underwriter's obligations under this Bond Purchase Agreement shall be subject to the following conditions:

(a) The representations and warranties of the Regents contained herein shall be true and correct in all material respects at the date hereof and at and as of the Closing, as if made at and as of the Closing and will be confirmed by certificates of the appropriate Regents' or University official or officials, dated the Closing Date, and the statements made in all certificates and other documents delivered to the Underwriter at the Closing pursuant hereto shall be true, complete and correct in all material respects at the Closing; and the Regents shall be in compliance with each of the warranties, agreements and covenants made by them in this Bond Purchase Agreement.

(b) At the Closing, the following conditions shall have been satisfied:

(1) the Series 2015A Bonds shall be executed by the Regents, authenticated by the Trustee and delivered to the Underwriter for purchase as described in Section 5 hereof;

(2) all actions which, in the opinion of Co-Bond Counsel and the Underwriter, shall be necessary in connection with the transactions contemplated hereby, shall have been duly taken and shall be in full force and effect;

(3) the Regents shall perform or shall have performed all of their obligations required under or specified in this Bond Purchase Agreement and the Official Statement to be performed at or prior to the Closing;

(4) all necessary resolutions and other official action of the Regents relating to the Regents' Documents and the issuance and sale of the Series 2015A Bonds, and all necessary resolutions and other official action of the Regents relating to all other agreements or documents to be executed and delivered by the Regents in connection with the issuance and sale of the Series 2015A Bonds shall have been taken and shall be in full force and effect and shall not have been amended, modified or supplemented in any material respect, except with the consent of the Underwriter;

(5) each of the Regents' Documents and the Series 2015A Bonds shall have been fully executed by the relevant parties and shall be in full force and effect; and

(6) the Official Statement, executed by the Regents and in form and substance acceptable to the Underwriter, shall have been delivered to the Underwriter.

(c) At or prior to the Closing, the Underwriter shall receive the following documents in such number of counterparts as shall be mutually agreeable to the Regents and the Underwriter:

(1) Certified copies of the 2015A Supplemental Resolution and all resolutions of the Regents relating to the Series 2015A Bonds and approving the execution and delivery of each Regents' Document and the Official Statement;

(2) Copies of the Series 2015A Bonds;

(3) Executed copies of the Continuing Disclosure Agreement, the Escrow Agreement, a Tax Certificate relating to the Series 2015A Bonds delivered by the Regents, and the Representations Letter;

(4) The Official Statement executed on behalf of the Regents by their duly authorized officer;

(5) The approving opinions of Co-Bond Counsel, dated the Closing Date, in substantially the forms set forth in Appendix F to the Official Statement, with a reliance letter relating thereto delivered to the Underwriter;

(6) Supplemental opinions of Co-Bond Counsel, dated the Closing Date, in substantially the form set forth in **Exhibit A** hereto;



(7) An opinion of Underwriter's Counsel, dated the Closing Date, in substantially the form acceptable to the Underwriter;

(8) An opinion of Counsel to the Regents and the University addressed to the Underwriter, the Regents, and Co-Bond Counsel, dated the Closing Date, in form and substance satisfactory to the Underwriter, to the effect that (i) the University is an institution of higher education and a body politic of the State, duly and validly created and existing pursuant to the laws of the State with, and the Regents have, full legal right, power and authority to issue the Series 2015A Bonds, to adopt the Resolution, to pledge the Pledged Revenues, to enter into the Regents' Documents, and to consummate the transactions contemplated by the Resolution and the Regents' Documents, (ii) the Resolution was duly adopted by the Regents, (iii) the adoption of the Resolution by the Regents and the execution and delivery of the Regents' Documents and the performance by the Regents or the University of the transactions contemplated thereby will not conflict with or constitute a breach of, or default under, any provision of the applicable law, rule, regulation, ordinance, judgment, order or decree to which the Regents or the University is subject, or any commitment, note, agreement or other instrument to which the University or Regents is a party or by which it or any of their respective property is bound; (iv) the Relevant Portions of the Official Statement are true and correct in all material respects and do not omit to state a material fact; (v) except as disclosed in the Official Statement, there is no action, suit, proceeding, official inquiry or investigation, at law or in equity, pending or, to the knowledge of such Counsel, threatened (and there is no basis for such action, suit, proceeding, official inquiry or investigation) which (1) questions the existence or powers of the Regents or the University or any of their respective officers; (2) seeks to prohibit, restrain or enjoin the sale, issuance or delivery of the Series 2015A Bonds or the authorization, execution and delivery of the Resolution or any Regent Document or validity of the proceedings taken by the Regents in connection with the issuance of the Series 2015A Bonds; (3) affects the collection of the Pledged Revenues pledged or to be pledged to pay the principal of and interest on the Series 2015A Bonds; or (4) contests the completeness or accuracy of the Official Statement;

(9) Letters from Moody's and S&P to the effect that the Series 2015A Bonds have received ratings of "Aa3" from Moody's and "A+" from S&P, both of which ratings shall be in effect at Closing;

(10) A certificate of the Regents, dated the Closing Date, in substantially the form acceptable to the Co-Bond Counsel and the Underwriter;

(11) A certificate of the Trustee, dated the Closing Date, to the effect that the Trustee (i) is duly organized and validly existing under the laws of the United States of America, with full corporate trust powers, (ii) has full right, power and authority to enter into and perform the obligations under the Resolution, and (iii) has validly accepted its obligations under the Resolution, which obligations are legally valid and binding obligations of the Trustee;

(12) A certificate of the Regents, dated the Closing Date, required by Sections 7.2 (2) and 7.2(4) of the Original Resolution; and

(13) Such additional legal opinions, certificates, proceedings, instruments and other documents as Co-Bond Counsel may reasonably request to evidence compliance by

the Regents with legal requirements, the truth and accuracy, as of the time of Closing, of the respective representations of the Underwriter and the Regents herein contained and the due performance or satisfaction by each of them at or prior to such time of all agreements then to be performed and all conditions then to be satisfied by each of them.

If the Regents shall be unable to satisfy the conditions to the obligations of the Underwriter contained in this Bond Purchase Agreement, or if the obligations of the Underwriter to place and accept delivery of the Series 2015A Bonds shall be terminated for any reason permitted by this Bond Purchase Agreement, this Bond Purchase Agreement shall terminate and neither the Underwriter nor the Regents shall be under further obligation hereunder; except that the Regents' obligations to pay fees and expenses, as provided in Section 9 hereof, shall continue in full force and effect. The Underwriter shall have the right to waive any of the conditions to its obligations contained in this Bond Purchase Agreement.

8. Survival of Representations, Warranties and Agreements. All representations, warranties and agreements of the Regents and the Underwriter shall remain operative and in full force and effect, regardless of any investigations made by or on behalf of the Underwriter or the Regents and shall survive the Closing. The obligations of the Regents and the Underwriter under Section 9 hereof shall survive the Closing and any termination of this Bond Purchase Agreement by the Underwriter pursuant to the terms hereof.

9. Fees and Expenses. The Regents will pay or cause to be paid all reasonable expenses incident to the performance of its obligations under this Bond Purchase Agreement, including, but not limited to, mailing or delivery of the Series 2015A Bonds, costs of printing of the Series 2015A Bonds, the Preliminary Official Statement, the final Official Statement and any amendment or supplement to the Official Statement, fees and disbursements of Co-Bond Counsel and Underwriter's Counsel, fees and expenses of the accountants of and counsel to the Regents, any fees charged by rating agencies for the ratings of the Series 2015A Bonds, and any fees and expenses of the Trustee.

10. Notices. Any notice or other communication to be given to the Regents under this Bond Purchase Agreement may be given by delivering the same in writing at its address set forth above and to the attention of President and any notice or other communication to be given to the Underwriter under this Bond Purchase Agreement may be given by delivering the same in writing to George K. Baum & Company, 1400 Wewatta Street, Suite 800, Denver, Colorado 80202, Attention: Lee White, Executive Vice President.

11. Benefit. This Bond Purchase Agreement is made solely for the benefit of the Regents and the Underwriter (including the successors or assigns of the Underwriter) and no other person, including any purchaser of the Series 2015A Bonds, shall acquire or have any right hereunder or by virtue hereof. This Bond Purchase Agreement shall be binding upon the successor and assigns, if any, of the Regents and the Underwriter.

12. Governing Law. This Bond Purchase Agreement shall be governed by and construed in accordance with the laws of the State, without giving effect to its principles of conflicts of laws.

[Signature Page Follows]

13. Effective Date. This Bond Purchase Agreement shall become effective upon your acceptance hereof and may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document.

Very truly yours,

GEORGE K. BAUM & COMPANY

By: \_\_\_\_\_  
[Name]  
[Title]

Accepted and agreed to as of  
the date first above written:

THE REGENTS OF THE UNIVERSITY OF IDAHO

By: \_\_\_\_\_  
Ronald E. Smith, Vice President for  
Finance and Administration and Bursar

Time of Execution: \_\_\_\_\_

**SCHEDULE 1**  
**MATURITIES, PRINCIPAL AMOUNTS,**  
**INTEREST RATES AND PRICES**

\$ \_\_\_\_\_  
**THE REGENTS OF THE UNIVERSITY OF IDAHO**  
**General Revenue Refunding Bonds , Series 2015A**

<b><u>Maturity Date</u></b> <b><u>(April 1)</u></b>	<b><u>Principal</u></b> <b><u>Amount</u></b> \$	<b><u>Interest</u></b> <b><u>Rate</u></b> %	<b><u>Price</u></b> %	<b><u>CUSIP</u></b>
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## EXHIBIT A

## Supplemental Opinion of Co-Bond Counsel

\_\_\_\_\_, 2015

George K. Baum & Company  
Denver, Colorado

Re: The Regents of the University of Idaho General Revenue Refunding Bonds,  
Series 2015A

This letter is being delivered to you pursuant to Section 7(c)(6) of the Bond Purchase Agreement (the "Purchase Agreement") dated January \_\_, 2015 between George K. Baum & Company (the "Underwriter"), and the Regents of the University of Idaho (the "Regents"), which Purchase Agreement relates to the purchase by the Underwriter of \$\_\_\_\_\_ aggregate principal amount of the Regents' General Revenue Refunding Bonds, Series 2015A (the "Series 2015A Bonds"). Capitalized terms which are used herein but which are not otherwise defined shall have the meanings assigned to them in the Purchase Agreement.

We have acted as co-bond counsel to the Regents in connection with the issuance of the Series 2015A Bonds and, in that capacity, have examined executed counterparts of the Purchase Agreement, the Resolution, the Continuing Disclosure Agreement and the Official Statement of the Regents with respect to the Series 2015A Bonds dated \_\_\_\_\_, 2015 (the "Official Statement"). We have also examined the originals or copies, certified or otherwise identified to our satisfaction, of such other documents, records and other instruments as we have deemed necessary or advisable for purposes of this letter.

On the basis of such examination, we are of the opinion as of the date hereof and under currently existing law as follows:

1. The Purchase Agreement and the Continuing Disclosure Agreement have each been duly authorized, executed and delivered by the Regents.
2. The Series 2015A Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Resolution is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended.
3. The statements contained in the Official Statement under the captions "INTRODUCTION—Authority for Issuance," "—Terms of the Series 2015A Bonds," "—Payment and Security for the Series 2015A Bonds," "THE SERIES 2015A BONDS," "SECURITY FOR THE SERIES 2015A BONDS—Pledged Revenues," "—Covenants," "—No Debt Service Reserve Account for the Series 2015A Bonds," and "TAX MATTERS," and in APPENDIX C, and APPENDIX F to the Official Statement insofar as the statements contained under such captions purport to summarize and/or extract certain provisions of the Series 2015A Bonds, the Resolution, and our opinion with respect to the status of interest on the Series 2015A Bonds, present an accurate summary and/or extract of such provisions in all material respects.

Because the primary purpose of our professional engagement as co-bond counsel was not to establish factual matters and because of the wholly or partially nonlegal character of many determinations involved in the preparation of the Official Statement, except with regards to the matters contained in Paragraph 3 above, we are not passing upon and do not assume any responsibility for the accuracy, completeness or fairness of any of the statements contained in the Official Statement and make no representation that we have independently verified the accuracy, completeness or fairness of any such statements. However, in our capacity as co-bond counsel, during the course of preparation of the Official Statement, we met in conferences with representatives of and counsel to the Regents and the University, your representatives and counsel, and others, during which conferences the contents of the Official Statement and related matters were discussed. Based on our participation in the above-mentioned conferences, and in reliance thereon and on the certificates and other documents herein mentioned, we advise you that no information came to the attention of the attorneys in our firm rendering legal services in such connection which caused them to believe that the Official Statement as of its date and as of the date of this letter contained or contains any untrue statement of a material fact or omitted or omits to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (except that no opinion or belief is expressed herein as to financial statements, financial, economic demographic or statistical data, forecasts, charts, estimates, projections, assumptions, expressions of opinion, any information about book-entry and The Depository Trust Company, and information contained in Appendix A, Appendix B, and Appendix E to the Official Statement).

We have on this day rendered our approving opinion as Co-Bond Counsel to the Regents with respect to the Series 2015A Bonds. You are entitled to rely on such opinion as if it were addressed to you.

This letter is furnished by us as co-bond counsel to the Regents. No attorney-client relationship has existed or exists between our firm and you in connection with the Series 2015A Bonds or by virtue of this letter. We disclaim any obligation to update this letter. This letter is delivered to you solely for your benefit and may not be relied upon by any other persons. This letter is not to be used, circulated, quoted or otherwise referred to or relied upon for any other purpose or by any other person. This letter is not intended to, and may not, be relied upon by the owners of the Series 2015A Bonds or by any party to whom it is not addressed.

Respectfully submitted,

**SKINNER FAWCETT LLP**

**BALLARD SPAHR LLP**

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**CONTINUING DISCLOSURE AGREEMENT**

**Between**

**THE REGENTS OF THE UNIVERSITY OF IDAHO**

**and**

**WELLS FARGO BANK, N.A.  
as Trustee and Dissemination Agent**

\_\_\_\_\_  
**Dated as of \_\_\_\_\_, 2015**  
\_\_\_\_\_

**Relating to**

**\$ \_\_\_\_\_**

**THE REGENTS OF THE UNIVERSITY OF IDAHO  
General Revenue Refunding Bonds  
Series 2015A**

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## CONTINUING DISCLOSURE AGREEMENT

This Continuing Disclosure Agreement (this "**Agreement**") dated as of \_\_\_\_\_, 2015, is entered into by and between THE REGENTS OF THE UNIVERSITY OF IDAHO (the "**Regents**"), a body politic and corporate organized and existing under and pursuant to the Constitution and laws of the State of Idaho (the "**University**"), and WELLS FARGO BANK, National Association, (the "**Trustee**" and as more particularly defined below, the "**Dissemination Agent**") in connection with the issuance by the Regents of its \$ \_\_\_\_\_ General Revenue Refunding Bonds, Series 2015A (the "**Bonds**"). The Bonds are being issued pursuant to a Supplemental Resolution adopted by the Regents on December 18, 2014 (the "**2015A Supplemental Resolution**") supplementing that certain Resolution adopted by the Regents on November 22, 1991 (as subsequently amended and supplemented and together with the 2015A Supplemental Resolution, referred to herein as the "**Resolution**").

The Regents covenant and agree as follows:

SECTION 1. Purpose of the Agreement. This Agreement is being executed and delivered by the Regents for the benefit of the Bondowners and in order to allow the Participating Underwriters (as defined by Rule 15c2-12) to comply with Rule 15c2-12.

SECTION 2. Definitions. In addition to the definitions set forth in the Resolution, which apply to any capitalized term used in this Agreement unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

"**Annual Financial Information**" means the financial information or operating data with respect to the University and the Pledged Revenues, delivered at least annually pursuant to Section 3 hereof, of the type set forth in the Official Statement, including but not limited to, such Pledged Revenues and debt service coverage information of the type set forth under the caption "HISTORICAL PLEDGED REVENUES," provided that such information shall be provided only on an actual basis, financial information and operating data set forth under the captions "SECURITY FOR THE SERIES 2015A BONDS – Tuition and Student Fees," "– Sales and Services Revenues," "– Facilities and Administrative Recovery Revenues," "– Other Operating Revenues" and "– Investment Income," "THE UNIVERSITY – Housing and Student Union Facilities," "– Employee Retirement Plan; Post Retirement Health Benefits" and "– Insurance," "FINANCIAL OPERATIONS OF THE UNIVERSITY – State Appropriations," "– Financial Assistance" and "– Schedule of Outstanding Indebtedness" and the table titled "Five-Year Historical Enrollment Summary" under the caption "THE UNIVERSITY – Student Body."

"**Audited Financial Statements**" means the annual financial statements for the University, prepared in accordance with generally accepted accounting principles as in effect from time to time, audited by a firm of certified public accountants.

"**Bondowner**" or "**owner of the Bonds**" means the registered owner of the Bonds, and so long as the Bonds are subject to the book-entry system, any Beneficial Owner as such term is defined in the Resolution.

**"Dissemination Agent"** means Wells Fargo Bank, National Association, acting in its capacity as Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by the Regents and which has filed with the Trustee under the Resolution a written acceptance of such designation.

**"Events"** means any of the events listed in Section 4(a) and 4(b) of this Agreement.

**"MSRB"** means the Municipal Securities Rulemaking Board or any other entity designated or authorized by the Securities and Exchange Commission to receive reports pursuant to Rule 15c2-12. Unless otherwise designated by the MSRB or the Securities and Exchange Commission, filings with the MSRB are to be made through the Electronic Municipal Market Access (EMMA) system of the MSRB, currently located at <http://emma.msrb.org>.

**"Official Statement"** means the final Official Statement dated June 25, 2014 delivered in connection with the issue and sale of the Bonds.

**"Rule 15c2-12"** shall mean Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

### SECTION 3. Provision of Annual Information.

(a) Commencing with the Fiscal Year ended June 30, 2015, and annually while the Bonds remain outstanding, the Regents shall provide to the Dissemination Agent Annual Financial Information and Audited Financial Statements.

(b) Such Annual Financial Information shall be provided by the Regents not later than 180 days after the end of each Fiscal Year. The Audited Financial Statements will be provided when available but in no event later than 180 days after the end of each Fiscal Year.

(c) The Regents may provide Annual Financial Information and Audited Financial Statements with respect to the University and the Pledged Revenues by specific cross-reference to other documents which have been submitted by the Dissemination Agent to the MSRB or filed with the Securities and Exchange Commission. If the document so referenced is a final official statement within the meaning of Rule 15c2-12, such final official statement must also be available from the MSRB. The Regents shall clearly identify each such other document so incorporated by cross-reference.

(d) The Dissemination Agent shall provide Annual Financial Information and Audited Financial Statements to the MSRB on or before the tenth day after the Dissemination Agent receives such Annual Financial Information and Audited Financial Statements from the Regents. The Regents shall include with each submission of Annual Financial Information to the Dissemination Agent a written representation addressed to the Dissemination Agent to the effect that the Annual Financial Information is the Annual Financial Information required by this Agreement and that it complies with the applicable requirements of this Agreement.

SECTION 4. Reporting of Events.

(a) At any time the Bonds are outstanding, in a timely manner not in excess of ten (10) business days after the occurrence of an Event, the Regents shall provide or cause to be provided to the MSRB notice of any of the following Events with respect to the Bonds:

- (1) Principal and interest payment delinquencies;
- (2) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (3) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (4) Substitution of credit or liquidity providers, or their failure to perform;
- (5) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
- (6) Defeasances;
- (7) Rating changes;
- (8) Tender offers; and
- (9) Bankruptcy, insolvency, receivership, or similar event of the Obligated Person.

For the purposes of the event identified in paragraph (4)(a)(9) hereof, the event is considered to occur when any of the following occur: (i) the appointment of a receiver, fiscal agent or similar officer for an obligated person in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the obligated person, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or (ii) the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the obligated person.

(b) At any time the Bonds are outstanding, in a timely manner not in excess of ten (10) business days after the occurrence of an Event, the Regents shall provide or cause to be provided to the MSRB notice of any of the following Events with respect to the Bonds, if material:

- (1) Non-payment related defaults;
- (2) Modification to the rights of the beneficial owners of the Bonds;
- (3) Bond calls;
- (4) Release, substitution or sale of property securing repayment of the Bonds;
- (5) The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms; and
- (6) Appointment of a successor or additional trustee or a change in the name of a trustee.

Whenever the Regents obtain knowledge of the occurrence of an Event specified in paragraph 4(b), the Regents shall as soon as possible determine if such Event would constitute material information for owners of Bonds.

(c) If the Regents determine that knowledge of the occurrence of an Event listed in Section 4(b) would be material, the Regents shall promptly notify the Dissemination Agent in writing. Such notice shall instruct the Dissemination Agent to report the occurrence pursuant to Section 4(d) hereof.

(d) If the Dissemination Agent has been instructed by the Regents to report the occurrence of an Event listed in Section 4(a) or Section 4(b), the Dissemination Agent shall in a timely manner not in excess of ten (10) business days after the occurrence of an Event file a notice of such occurrence with the MSRB with a copy to the Regents.

(e) The Dissemination Agent, if the Dissemination Agent is also the Trustee, shall promptly advise the Regents whenever, in the course of performing its duties as Trustee under the Resolution, it identifies an occurrence of an Event which could require the Regents to provide a notice pursuant to this Section 4; provided that the failure of the Dissemination Agent so to advise the Regents of such occurrence shall not constitute a breach by the Dissemination Agent, in its capacity as Trustee, of any of its duties and responsibilities hereunder or under the Resolution.

(f) At any time the Bonds are outstanding, the Dissemination Agent shall, without further direction or instruction from the Regents, provide in a timely manner to the MSRB notice of any failure by the Regents to provide Annual Financial Information and Audited Financial Statements (in substantially the form attached as Exhibit A to this Agreement) as specified in Section 3 hereof.

SECTION 5. Filing. The filing of Annual Financial Information, Audited Financial Statements, notices of Events or any other notice required by this Agreement shall be

effected by sending the filing or notice to the MSRB, in such designated electronic format, accompanied by such identifying information, as shall have been prescribed by the MSRB and which shall be in effect on the date of filing of such information.

#### SECTION 6. Concerning the Dissemination Agent.

(a) The Dissemination Agent shall not have any obligation to examine or review the Annual Financial Information and Audited Financial Statements and neither shall it have a duty to verify the accuracy or completeness of the Annual Financial Information and Audited Financial Statements.

(b) Solely for the purpose of (i) defining the standards of care and performance, including indemnification, applicable to the Dissemination Agent in the performance of its obligations under this Agreement, (ii) the manner of execution by the Dissemination Agent of those obligations, and (iii) matters of removal, resignation, succession of the Dissemination Agent under this Agreement, Article VIII of the Resolution is hereby made applicable to this Agreement as if this Agreement was (solely for this purpose) contained in the Resolution; provided that the Dissemination Agent shall have only such duties under this Agreement as are specifically set forth in this Agreement. Except as provided in Section 4(e) hereof, the Dissemination Agent shall have no duty to investigate or monitor compliance by the Regents with the terms of this Agreement. The Disseminating Agent shall have no obligation to examine or review the Annual Financial Information, Audited Financial Statements and notices of Events provided to it pursuant to the terms of this Agreement, and shall have no liability or responsibility for the form of, or the accurateness or completeness of, the Annual Financial Information, Audited Financial Statements and notices of Events disseminated by the Dissemination Agent hereunder.

Notwithstanding the provisions of Section 6 above, the Regents hereby agree to the extent permitted by law to hold harmless and to indemnify the Dissemination Agent, its employees, officers, directors, agents and attorneys from and against any and all claims, damages, losses, liabilities, reasonable costs and expenses whatsoever (including attorneys' fees and expenses, whether incurred before trial, at trial, or on appeal, or in any bankruptcy or arbitration proceedings), which may be incurred by the Dissemination Agent by reason of or in connection with the disclosure of information in accordance with this Agreement, except to the extent such claims, damages, losses, liabilities, costs or expenses result directly from the negligence or willful misconduct of the Dissemination Agent in the performance of its duties under this Agreement. In no event shall Disclosure Agent be liable for special, indirect, or consequential losses or damages of any kind whatsoever (including but not limited to lost profits) even if Disclosure Agent has previously been advised of such losses and damages. This Section shall survive the termination of the Agreement, payment of the Bonds, and the removal or resignation of the Dissemination Agent.

SECTION 7. Term. This Agreement shall be in effect from and after the issuance and delivery of the Bonds and shall extend to the earliest of (a) the date all principal and interest on the Bonds shall have been deemed paid pursuant to the terms of the Resolution; (b) the date that the Regents shall no longer constitute an "obligated person" with respect to the Bonds within the meaning of Rule 15c2-12; and (c) the date on which those portions of Rule 15c2-12 which

require this Agreement are determined to be invalid by a court of competent jurisdiction in a non-appealable action, have been repealed retroactively or otherwise do not apply to the Bonds, which determination may be made in any manner deemed appropriate by the Regents, including by an opinion of any attorney or firm of attorneys experienced in federal securities laws selected by the Regents. The Regents shall provide a notice of any such termination with the Dissemination Agent who shall file such notice with the MSRB.

SECTION 8. Amendment; Waiver. Notwithstanding any other provision of this Agreement, the Regents may amend this Agreement, and any provision of this Agreement may be waived, if such amendment or waiver is consistent with Rule 15c2-12. Written notice of any such amendment or waiver shall be provided by the Regents to the Dissemination Agent who shall file it with the MSRB, and the Annual Financial Information shall explain the reasons for the amendment and the impact of any change in the type of information being provided. If any amendment changes the accounting principles to be followed in preparing financial statements, the Annual Financial Information for the year in which the change is made will present a comparison between the financial statement or information prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

SECTION 9. Additional Information. Nothing in this Agreement shall be deemed to prevent the Regents from disseminating any other information, using the means of dissemination set forth in this Agreement or any other means of communication, or including any other annual information or notice of occurrence of an event which is not an Event, in addition to that which is required by this Agreement; provided that the Regents shall not be required to do so. If the Regents choose to include any annual information or notice of occurrence of an event in addition to that which is specifically required by this Agreement, the Regents shall have no obligation under this Agreement to update such information or include it in any future annual filing or notice of occurrence of an Event.

SECTION 10. Default and Enforcement. If the Regents fail to comply with any provision of this Agreement, any Bondowner may take action to seek specific performance by court order to compel the Regents to comply with its undertaking in this Agreement; provided that any Bondowner seeking to require the Regents to so comply shall first provide at least 30 days' prior written notice to the Regents of the Regents' failure (giving reasonable details of such failure), following which notice the Regents shall have 30 days to comply and, provided further, that only the owners of no less than a majority in aggregate principal amount of the Bonds may take action to seek specific performance in connection with a challenge to the adequacy of the information provided by the Regents in accordance with this Agreement, after notice and opportunity to comply as provided herein, and such action shall be taken only in a court of jurisdiction in the State of Idaho. A DEFAULT UNDER THIS AGREEMENT SHALL NOT BE DEEMED AN EVENT OF DEFAULT UNDER THE RESOLUTION OR THE BONDS, AND THE SOLE REMEDY UNDER THIS AGREEMENT IN THE EVENT OF ANY FAILURE OF THE REGENTS TO COMPLY WITH THIS AGREEMENT SHALL BE AN ACTION TO COMPEL PERFORMANCE.

SECTION 11. Beneficiaries. The Agreement shall inure solely to the benefit of the Regents, the Participating Underwriters and owners from time to time of the Bonds, and shall create no rights in any other person or entity.

**THE REGENTS OF THE UNIVERSITY  
OF IDAHO**

By: \_\_\_\_\_  
Ronald E. Smith, Vice President  
for Finance and Administration and  
Bursar

**WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Trustee and  
Dissemination Agent**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**

**NOTICE TO MSRB OF FAILURE TO FILE ANNUAL FINANCIAL INFORMATION  
AND/OR AUDITED FINANCIAL STATEMENTS**

Name of Issuer: The Regents of the University of Idaho

Name of Bond Issue: The Regents of the University of Idaho General Revenue Refunding  
Bonds, Series 2015A

Date of Issuance: \_\_\_\_\_, 2015

NOTICE IS HEREBY GIVEN that the Issuer has not provided Annual Financial Information and/or Audited Financial Statements with respect to the above-named Bonds as required by Section 3 of the Continuing Disclosure Agreement dated as of \_\_\_\_\_, 2015, adopted by the Regents of the University of Idaho. The Issuer anticipates that the Annual Financial Information and/or Audited Financial Statements will be filed by [Date].

Dated: \_\_\_\_\_, 20\_\_

**WELLS FARGO BANK, NATIONAL  
ASSOCIATION**, as Trustee

By: \_\_\_\_\_  
Authorized Signatory

cc: Issuer



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201 South Main Street  
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www.ballardspahr.com

515 SOUTH 6TH STREET  
P.O. BOX 700  
BOISE, ID 83701-0700  
TELEPHONE (208) 345-2663  
FAX (208) 345-2668

January \_\_, 2015

University of Idaho  
P.O. Box 443168  
Moscow Idaho 83844-3168

RE: The Regents of the University of Idaho General Revenue Refunding Bonds, Series 2015A

We have acted as co-bond counsel to the Regents of the University of Idaho (the "Regents") in connection with the issuance by the Regents of their General Revenue Refunding Bonds, Series 2015A (the "Bonds"). The Bonds are being issued pursuant to (i) Title 57, Chapter 5 and Title 33, Chapter 38, Idaho Code, as amended and (ii) a Resolution, adopted by the Regents on November 22, 1991, as heretofore amended, supplemented, and restated, and as further supplemented and amended by a supplemental resolution of the Regents adopted on December \_\_, 2014 (collectively, the "Resolution"). The Bonds are being issued (i) to provide funds to refund certain outstanding bonds issued by The Regents, to finance and refinance certain capital improvements of the University of Idaho (the "University"), and (ii) to pay costs of issuance associated with the Bonds. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Resolution.

Our services as co-bond counsel have been limited to the preparation of the legal proceedings and supporting certificates authorizing the issuance of the Bonds under the applicable laws of the State of Idaho and to a review of the transcript of such proceedings and certificates. As to questions of fact material to our opinion, we have relied upon the certified proceedings and other certifications of public officials furnished to us without undertaking to verify the same by independent investigation. Our examination has been limited to the foregoing as they exist or are in effect as of the date hereof. Our opinion is limited to the matters expressly set forth herein, and we express no opinion concerning any other matters.

Based on our examination and the foregoing, we are of the opinion as of the date hereof and under existing laws as follows:

1. The Resolution has been duly adopted by the Regents and constitutes a valid and binding obligation of the Regents enforceable upon the Regents.
2. The Resolution creates a valid lien on the amounts pledged thereunder for the security of the Bonds.
3. The Bonds are valid and binding limited obligations of the Regents, payable solely from the Pledged Revenues and other amounts pledged therefor under the Resolution.

University of Idaho

January \_\_, 2015

Page 2

4. Based on an analysis of currently existing laws, regulations, decisions and interpretations, interest on the Bonds is excludable from gross income for purposes of federal income tax under existing laws as enacted and construed on the date of initial delivery of the Bonds, assuming the accuracy of the certifications of the Regents and continuing compliance by the Regents with the requirements of the Internal Revenue Code of 1986. Interest on the Bonds is not an item of tax preference for purposes of either individual or corporate federal alternative minimum tax; however interest on the Bonds held by a corporation (other than an S corporation, regulated investment company, or real estate investment trust) may be indirectly subject to federal alternative minimum tax because of its inclusion in the adjusted current earnings of a corporate holder.

5. Interest on the Bonds is exempt from State of Idaho personal income taxes.

In rendering our opinion, we wish to advise you that:

(i) The rights of the Owners of the Bonds and the enforceability thereof and of the Resolution may be subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable, and their enforcement may also be subject to the application of equitable principles and the exercise of judicial discretion in appropriate cases;

(ii) We express no opinion herein as to the accuracy, adequacy, or completeness of the Official Statement or any other offering material relating to the Bonds; and

(iii) Except as set forth above, we express no opinion regarding any other tax consequences relating to ownership or disposition of, or the accrual or receipt of interest on the Bonds.

Respectfully submitted,

**SKINNER FAWCETT LLP**

**BALLARD SPAHR LLP**

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201 South Main Street  
Salt Lake City, UT 84111-2221  
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BOISE, ID 83701-0700  
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January \_\_, 2015

George K. Baum & Company  
Denver, Colorado

Re: The Regents of the University of Idaho General Revenue Refunding Bonds,  
Series 2015A

This letter is being delivered to you pursuant to Section 7(c)(6) of the Bond Purchase Agreement (the "Purchase Agreement") dated January \_\_, 2015 between George K. Baum & Company (the "Underwriter"), and the Regents of the University of Idaho (the "Regents"), which Purchase Agreement relates to the purchase by the Underwriter of \$\_\_\_\_\_ aggregate principal amount of the Regents' General Revenue Refunding Bonds, Series 2015A, (the "Series 2015A Bonds"). Capitalized terms which are used herein but which are not otherwise defined shall have the meanings assigned to them in the Purchase Agreement.

We have acted as co-bond counsel to the Regents in connection with the issuance of the Series 2015A Bonds and, in that capacity, have examined executed counterparts of the Purchase Agreement, the Resolution, the Continuing Disclosure Agreement and the Official Statement of the Regents with respect to the Series 2015A Bonds dated January \_\_, 2015 (the "Official Statement"). We have also examined the originals or copies, certified or otherwise identified to our satisfaction, of such other documents, records and other instruments as we have deemed necessary or advisable for purposes of this letter.

On the basis of such examination, we are of the opinion as of the date hereof and under currently existing law as follows:

1. The Purchase Agreement and the Continuing Disclosure Agreement have each been duly authorized, executed and delivered by the Regents.

2. The Series 2015A Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Resolution is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended.

3. The statements contained in the Official Statement under the captions "INTRODUCTION—Authority for Issuance," "—Terms of the Series 2015A Bonds," "—Payment and Security for the Series 2015A Bonds," "THE SERIES 2015A BONDS," "SECURITY FOR THE SERIES 2015A BONDS—Pledged Revenues," "—Covenants," "—No Debt Service Reserve Account for the Series 2015A Bonds," and "TAX MATTERS," and in APPENDIX C, APPENDIX D and APPENDIX F to the Official Statement insofar as the

statements contained under such captions purport to summarize and/or extract certain provisions of the Series 2015A Bonds, the Resolution, and our opinion with respect to the status of interest on the Series 2015A Bonds, present an accurate summary and/or extract of such provisions in all material respects.

Because the primary purpose of our professional engagement as co-bond counsel was not to establish factual matters and because of the wholly or partially nonlegal character of many determinations involved in the preparation of the Official Statement, except with regards to the matters contained in Paragraph 3 above, we are not passing upon and do not assume any responsibility for the accuracy, completeness or fairness of any of the statements contained in the Official Statement and make no representation that we have independently verified the accuracy, completeness or fairness of any such statements. However, in our capacity as co-bond counsel, during the course of preparation of the Official Statement, we met in conferences with representatives of and counsel to the Regents and the University, your representatives and counsel, and others, during which conferences the contents of the Official Statement and related matters were discussed. Based on our participation in the above-mentioned conferences, and in reliance thereon and on the certificates and other documents herein mentioned, we advise you that no information came to the attention of the attorneys in our firm rendering legal services in such connection which caused them to believe that the Official Statement as of its date and as of the date of this letter contained or contains any untrue statement of a material fact or omitted or omits to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (except that no opinion or belief is expressed herein as to financial statements, financial, economic demographic or statistical data, forecasts, charts, estimates, projections, assumptions, expressions of opinion, any information about book-entry and The Depository Trust Company, and information contained in Appendix A, Appendix B, and Appendix E to the Official Statement).

We have on this day rendered our approving opinion as Co-Bond Counsel to the Regents with respect to the Series 2015A Bonds. You are entitled to rely on such opinion as if it were addressed to you.

This letter is furnished by us as co-bond counsel to the Regents. No attorney-client relationship has existed or exists between our firm and you in connection with the Series 2015A Bonds or by virtue of this letter. We disclaim any obligation to update this letter. This letter is delivered to you solely for your benefit and may not be relied upon by any other persons. This letter is not to be used, circulated, quoted or otherwise referred to or relied upon for any other purpose or by any other person. This letter is not intended to, and may not, be relied upon by the owners of the Series 2015A Bonds or by any party to whom it is not addressed.

Respectfully submitted,

**SKINNER FAWCETT LLP**

**BALLARD SPAHR LLP**

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TELEPHONE (208) 345-2663  
FAX (208) 345-2668

January \_\_, 2015

George K. Baum & Company  
1400 Wewatta Street, Suite 800  
Denver, CO 80202

Wells Fargo Bank, National Association  
1300 SW 5<sup>th</sup> Ave.  
Portland, OR 97201

RE: The Regents of the University of Idaho General Revenue Refunding Bonds,  
Series 2015A.

With regard to our approving opinion as Co-Bond Counsel of even date herewith delivered in connection with the above-captioned bonds you are entitled to rely thereon as if such opinion were addressed to you.

This letter is addressed to you and is for your benefit only and no one else shall be entitled to rely on this letter.

Respectfully submitted,

**SKINNER FAWCETT LLP**

**BALLARD SPAHR LLP**

[On University of Idaho Letterhead]

January \_\_, 2015

The Regents of the University of Idaho  
University of Idaho  
Moscow, ID 83844

Skinner Fawcett LLP  
P.O. Box 700  
515 South Sixth Street  
Boise, ID 83701

Ballard Spahr LLP  
201 South Main Street, Suite 800  
Salt Lake City, UT 84111

George K. Baum & Company  
1400 Wewatta Street, Suite 800  
Denver, CO 80202

Office of the Idaho Attorney General  
Statehouse, Second Floor  
Boise, Idaho 83720

Wells Fargo Bank, National Association  
1300 SW 5th Ave.  
Portland, OR 97201

Re: The Regents of the University of Idaho, General Revenue Refunding Bonds, Series 2015A in the Principal Amount of \$\_\_\_\_\_ (the "Series 2015A Bonds").

Ladies and Gentlemen:

As University Counsel to The Regents ("Regents") of the University of Idaho (the "University"), I have reviewed certain documents in connection with the issuance and sale by the Regents of the above-captioned bonds (the "2015A Bonds"), including the Resolution of the Regents adopted on November 22, 1991, as previously restated, amended and supplemented, and the Supplemental Resolution of the Regents dated December \_\_, 2014, authorizing the issuance and sale of the Series 2015A Bonds (collectively, the "Resolution"), the Preliminary Official Statement dated November \_\_, 2014, the Official Statement dated January \_\_, 2015 (the "Official Statement"), and such other documents as I deemed necessary

Regents of the University of Idaho  
 Skinner Fawcett LLP  
 Ballard Spahr, LLP  
 George K. Baum & Company  
 Wells Fargo Bank, National Association  
 January \_\_, 2015  
 Page 2

to render this opinion. Capitalized terms used as defined terms in this opinion have the meaning assigned to such terms in the Resolution. This opinion is rendered under the Bond Purchase Agreement dated January \_\_, 2015 (the "Bond Purchase Agreement") between the Regents and George K. Baum & Company (the "Underwriter"), wherein the Regents agree to issue and sell to the Underwriter the Series 2015A Bonds.

Based upon my examination, it is my opinion that:

1. The University is an institution of higher education and a body politic of the State of Idaho, duly and validly created and existing pursuant to the laws of the State of Idaho, with, and the Regents have, full legal right, power, and authority (i) to issue bonds of the University pursuant to the Resolution; (ii) to adopt the Resolution; (iii) to enter into the Bond Purchase Agreement, the Continuing Disclosure Agreement and the other agreements contemplated or required by the Resolution and the Bond Purchase Agreement; (iv) to pledge the Pledged Revenues (as defined in the Resolution) to secure the payment of the principal of and interest on the Series 2015A Bonds; and (v) to carry out and consummate the transactions contemplated by the Resolution, the Official Statement, the Continuing Disclosure Agreement and the Bond Purchase Agreement.

2. The meeting of the Regents on December \_\_, 2014, at which the Supplemental Resolution was duly adopted by the Regents, was called and held pursuant to law, all public notices required by law were given, and the actions taken at the meeting, insofar as such actions relate to the Series 2015A Bonds, were legally and validly taken.

3. The adoption of the Resolution by the Regents, the execution and delivery of the Bond Purchase Agreement, the Continuing Disclosure Agreement and the other agreements contemplated or required by the Resolution, the Official Statement and Bond Purchase Agreement, and the performance by the Regents or the University of the transactions contemplated thereby will not conflict with or constitute a breach of or default under, any provision of the Idaho Constitution or laws or any applicable existing law, rule, regulation, ordinance, judgment, order or decree to which the University or the Regents is subject, or to the best of our knowledge after due inquiry, any commitment, note, agreement or other instrument to which the Regents or University is a party or by which it or any of its property is bound, or conflict with or constitute a default under or result in the creation or imposition of any security interest, lien, charge or encumbrance (other than the lien of the Resolution) on any of its assets pursuant to the provisions of any of the foregoing.

4. The statements in the Official Statement under the sections titled "INTRODUCTION – the Regents and the University of Idaho" and "– Purpose of the Series 2015A Bonds," "SECURITY FOR THE SERIES 2015A BONDS," "PLAN OF FINANCE – The Refunding Project," "HISTORICAL PLEDGED REVENUES," "THE UNIVERSITY,"



Regents of the University of Idaho  
Skinner Fawcett LLP  
Ballard Spahr, LLP  
George K. Baum & Company  
Wells Fargo Bank, National Association  
January \_\_, 2015  
Page 3

“FINANCIAL OPERATIONS OF THE UNIVERSITY,” “UNIVERSITY GOVERNANCE AND ADMINISTRATION,” “CONTINUING DISCLOSURE” and “LITIGATION” and in Appendix A to the Official Statement, are true and correct in all material respects and do not contain an untrue statement or omission of a material fact, it being understood that, in rendering this opinion, I am not expressing an opinion with respect to statistical data, technical and financial statements, operating statistics, and other financial data contained under these captions of the Official Statement. I hereby consent to the inclusion of my name as University Counsel to the Regents and the University in the section of the Official Statement entitled "LEGAL MATTERS" and on the cover page thereof.

5. The Regents have duly authorized the execution, delivery and performance by the Regents of the Bond Purchase Agreement and the Continuing Disclosure Agreement and such agreements are valid and binding obligations of the Regents enforceable against the Regents in accordance with their terms (subject to bankruptcy, insolvency, reorganization, moratorium and other laws affecting the rights of creditors generally and to the application of equitable remedies, if equitable remedies are sought).

6. Except as described in the Official Statement, there is no action, suit, proceeding, official inquiry or investigation, at law or in equity, pending or, to my knowledge threatened (and there is no basis for such action, suit, proceeding, official inquiry or investigation,) which (i) questions the existence or powers of the Regents or the University or the title to office of any present official of the Regents or the University; (ii) seeks to prohibit, restrain or enjoin the sale, issuance or delivery of any of the Series 2015A Bonds or the authorization, execution and delivery of the Resolution, the Bond Purchase Agreement, Continuing Disclosure Agreement and the other agreements contemplated or required by the Resolution, the Official Statement and Bond Purchase Agreement; (iii) affects the collection of the Pledged Revenues pledged or to be pledged to pay the principal of and interest on the 2015A Bonds, or the pledge of the revenue and other funds and accounts under the Resolution; (iv) contests the completeness or accuracy of the Official Statement; or (v) contests any authority for the issuance of the 2015A Bonds, and the adoption of the Resolution, or the execution and delivery of the Bond Purchase Agreement and other agreements contemplated or required by the Resolution, the Official Statement or the Bond Purchase Agreement or the validity of any proceedings taken by the Regents or the University in connection with the issuance or sale of the 2015A Bonds.

Very Truly Yours,

Kent E. Nelson  
University Counsel

# MOODY'S

## INVESTORS SERVICE

### New Issue: Moody's assigns Aa3 ratings to University of Idaho's \$18M of Ser. 2015A bonds; outlook stable

Global Credit Research - 04 Dec 2014

#### \$204M rated debt

UNIVERSITY OF IDAHO, ID  
Public Colleges & Universities  
ID

#### Moody's Rating ISSUE

#### RATING

General Revenue Refunding Bonds, Series 2015A

Aa3

**Sale Amount** \$17,540,000

**Expected Sale Date** 01/14/15

**Rating Description** Revenue: Public University Broad Pledge

#### Moody's Outlook STA

#### Opinion

NEW YORK, December 04, 2014 –Moody's Investors Service assigns a Aa3 rating to the University of Idaho's (UI) \$17.5 million General Revenue Refunding Bonds, Series 2015A. At this time, we are also affirming the existing Aa3 ratings on the university's outstanding General Revenue Bonds. The rating outlook is stable.

#### SUMMARY RATING RATIONALE

The Aa3 rating and stable outlook reflect the University of Idaho's important role as the state's land-grant university with growing net tuition revenue, sizable enrollment and a statewide presence through instructional centers as well as agricultural research and extension centers. The rating is also supported by a history of balanced operations, with stable cash flow providing good debt service coverage. Offsetting factors include modest resource coverage of debt and operations, very thin liquidity, and some recent softness in student demand as evidenced by declining matriculation rates of incoming freshmen and overall enrollment declines.

#### STRENGTHS

\*As the land-grant doctoral research university in the State of Idaho, the university has sizeable enrollment in a variety of programs with total full-time equivalent (FTE) enrollment of 9,792 FTEs. The University of Idaho's instructional centers, as well as agricultural research and extension centers, give the university a statewide presence.

\*Consistently balanced operating performance provides good debt service coverage (2.9 times in FY 2014). Fiscal (FY) 2014 operating cash flow margin was a solid 11.8%.

\*Robust growth of net tuition revenue and net tuition per student (\$7,742 in FY 2014, up 50% over FY 2010) has helped to partly offset declines in state appropriations and recent softness in enrollment.

\*Growing research programs in biosciences, agriculture and wildfire add to strategic importance to the state. The state has designated approximately \$5 million in capital support toward a new integrated research and innovation center.

\*General revenue bonds benefit from a broad pledge of gross revenues, which totaled \$142.3 million in FY 2014, providing pro-forma maximum annual debt service coverage of approximately 9.3 times.

## CHALLENGES

\*Relatively leveraged balance sheet, with modest expendable financial resources of \$177 million cushioning pro-forma debt 0.9 times.

\*Low liquidity limits the university's financial flexibility, with only 102 monthly days cash at fiscal year-end 2014.

\*Recent enrollment declines demonstrate some softening of student demand (matriculation rate of incoming freshmen students has declined to 28% in fall 2014 from 44% in fall 2010).

\*State appropriations as a percentage of overall revenue remain well below pre-recession levels and will take several years to restore; state appropriations represent approximately 33% of total operating revenue in FY 2014.

## DETAILED CREDIT DISCUSSION

**USE OF PROCEEDS:** Proceeds of the Series 2015A bonds will be used to currently refund the outstanding Series 2005A Revenue Refunding Bonds and pay cost of issuance. The prior debt service reserve fund will be terminated and will be utilized as a source of funds.

**LEGAL SECURITY:** The general revenue bonds are secured by Pledged Revenues of the University of Idaho which include tuition and student fees, auxiliary revenues, indirect cost recovery revenues, direct payments associated with the Build America Bonds (BABs), and other specified revenues. State appropriations and other externally restricted funds are not included in the Pledged Revenues. There is an additional bonds test and rate covenant of 1.0 time coverage of annual debt requirements. There is expected to be no debt service reserve fund. In FY 2014, Pledged Revenues of \$142.3 million cover pro forma maximum annual debt service of \$15.3 million by 9.3 times.

**DEBT STRUCTURE:** The university's bonds generally have long-term amortization schedules, with the current series maturing in 2026. With this refunding, maximum annual debt service of \$15.3 million occurs in FY 2015. The Series 2015A bonds will have accelerated savings in FY 2016 of approximately \$2.09 million, with an interest only payment in that year, thereby reducing the university's Maximum Annual Debt Service. Subsequent years will have level savings of \$130,000 per year.

Approximately 60% of the university's debt is fixed rate, with the remaining 40% (the Series 2007B and Series 2011 bonds) adjustable rate, issued at a Term Interest Rate with the initial terms ending on April 1, 2018 and April 1, 2021, respectively. These bonds are subject to a mandatory tender on the effective date of any new Term Interest Rate Period. After the initial period, the university can determine the interest rate period (one, three, six, nine, or twelve months or any multiple of six months). If sufficient funds are not available to pay the purchase price on the bonds, these tendered bonds will bear interest at the Bond Buyer 25 Revenue Bond Index plus 150 basis points to final maturity. The university is not obligated to purchase the tendered bonds and failure to purchase does not constitute an event of default. Moody's tracks these bonds as demand debt, although we note that the soft put and the more remote tender dates create significantly less risk than traditional variable rate demand debt. A short-term rating was not assigned to the Series 2007B and Series 2011 bonds because the initial term was greater than three years.

The Series 2007B bonds maturing April 1, 2018 and later are secured by a Standby Bond Purchase Agreement provided by Dexia Credit Local (Baa2 negative/P-2) with a stated expiration date of October 31, 2019.

**INTEREST RATE DERIVATIVES:** None

**MARKET POSITION: IMPORTANT ROLE AS STATE'S LAND-GRANT PUBLIC UNIVERSITY, WITH MIDSIZED ENROLLMENT AND LIMITED RESEARCH**

The University of Idaho's role as the land-grant doctoral research institution for the State of Idaho (Aa1 Issuer Rating) provides the fundamental underpinning for its Aa3 long-term rating. The university's main campus is in Moscow, a relatively rural area in the northwest portion of the state. This campus is supplemented by instructional centers in Boise, Coeur d'Alene, and Idaho Falls. In addition, other outreach activities, such as its 42 agricultural research and extension offices/centers, give the university a statewide presence.

We expect the university to maintain generally stable enrollment and market demand, with some moderate volatility due to intense competition for the broad array of undergraduate, graduate, and professional programs, with various forms of delivery. Enrollments have declined modestly in each of the last four years, due to some softness in graduate programs in the earlier years, and a reduction in the number of credit hours required to complete an

undergraduate degree beginning in fall 2013. Graduate enrollment represents approximately 14% of overall total enrollment of 9,792 full-time equivalent students. The majority of graduate enrollment declines was in the Masters of Education program due to an increase in its employee tuition fee per credit rate. As with the national trend, enrollment in the law program has also experienced a decline.

Competition for undergraduate students is evident in an over 15% decline in the matriculation rate (percent of admitted undergraduate students choosing to enroll) to 28% in fall 2014 from 44% in fall 2010. UI is in the midst of revamping its recruitment and retention strategies, with a goal of increasing the overall participation rate of traditional age and adult students within the state of Idaho. UI currently draws approximately 34% of undergraduate students from out of state, primarily from Washington, Montana, Oregon, California, and Alaska. Transfer students account for approximately 30% of the university's annual new enrollment.

The university has a limited but strategically important research profile as the primary research university among the state's public institutions. Research expenditures have been relatively stable, and were at \$70.5 million in FY 2014 (20% of expenditures). Total award amounts in FY 2014 are down a substantial 13% from 2013, reflecting the highly competitive research funding environment with pressure on federal research funding. Management reports that the university is undertaking more collaborative efforts with institutions in adjacent states and reports their existing public policy and social research initiatives are achieving federal funding success. Federal award represent approximately 86% of total awards.

#### OPERATING PERFORMANCE: RECENT ROBUST NET TUITION REVENUE GROWTH EXPECTED TO SLOW; STATE APPROPRIATIONS TO INCREASE MODESTLY

The University of Idaho will continue to produce balanced operating performance through strong budgeting with regular reconciliations, effective management of tuition and student fee revenue, and necessary expense containment in light of declining research awards. Operating performance has been balanced to positive in recent years, with the three year average operating margin at 1.9 % (FY 2012-2014), and FY 2014 operating cash flow margin of 11.8% providing a good 2.9 times debt service coverage. In FY 2011, the university instituted quarterly interim financial reporting to the Board of Regents, a best practice that will assist with maintaining balanced operations in the future.

UI continues to have additional pricing power despite healthy growth of net tuition per student over the last 5 years, up approximately 50% from FY 2010 to \$7,742 in fall 2014. However, the ability to raise tuition and fees is limited by the Board of Regents, whose policy limits total tuition and fee increases to 10% in any given year unless granted special permission.

The university benefits from diverse revenue streams with government appropriations representing the largest share of operating revenues at 33%, followed closely by tuition and auxiliaries (including Pell grants), at 31%. Growth of overall net tuition revenue has begun to slow (just 1.5% in FYs 2013 and 2014) with enrollment declines. Net tuition per student is expected to continue to grow at a healthy rate as UI's overall rate increase is 4.7% in FY 2015.

State appropriations, while growing modestly in FYs 2013, 2014 and 2015, are expected to remain below historical levels, both on a per student basis and as a percent of total operating revenue, for the next few years. The university has proposed a strategy for the state to begin restoring base funding to FY 2009 levels (\$105 million) through 5% annual increases (FY 2015 total state appropriation is \$90.5 million). State appropriation per student of \$11,637 remains very strong relative to the median for Aa3 public institutions (\$5,225), but below the recent high of \$13,064 in FY 2009. For more information on the state of Idaho's credit profile, see our last report published on February 12, 2013.

#### BALANCE SHEET POSITION: THIN LIQUIDITY AND MODEST RESOURCE CUSHION; DEBT BURDEN WILL REMAIN MANAGEABLE

UI leverage is on par with Aa3 rated peers and we expect the university to maintain adequate financial resources relative to debt and operations based on modest fundraising and annual amortization of debt. The University of Idaho and its affiliated foundation's combined financial resources totaled \$380 million and expendable resources totaled \$177 million at June 30, 2014. The university continues to make significant capital investments, with approximately \$160 million spent on plant over the last five years paid from of a combination of cash flow, gifts and reserves. The FY 2014 expendable resources cushion pro-forma debt of \$207 million by 0.9 times and operations by just 0.5 times, compared to the Aa3 medians of 0.9 times and 0.6 times in FY 2013.

The university's monthly liquidity of \$89 million is up over previous years, but still thin, translating to a low 102

monthly days cash, well below the Aa3-median of 149 days. Weak liquidity and resource coverage of debt is partially mitigated by the university's predominately fixed-rate debt, revenue diversity and careful budget management.

The UI foundation's consolidated investment trust totaled \$241 million at June 30, 2014, recording a 15.3% return for FY 14, in line with peers. The asset allocation is relatively conservative and with a majority of assets in equities. The foundation's investment advisor is Cambridge Associates.

Financial resources should grow modestly in the near term as the university has exceeded its \$225 million goal for "Campaign Idaho: Inspiring Futures", which will conclude on December 31, 2014. To date, the university has raised \$245 million, with more than half received in cash. Funds raised in this comprehensive campaign are directed toward student support, faculty support, facilities, and academic / student services programming.

Future borrowing plans are expected to be manageable. Management reports the potential for \$12 million of additional debt in the next three to five years to finance a proposed research and classroom building with overall project cost of \$24 million. The remainder of project costs is expected to be covered by state appropriations, federal funding and gifts. By the expected time of issuance (FY 2017), the university will have amortized over \$12 million of principal on outstanding bonds.

The university's adjusted net pension liability for its portion of the state's defined benefit pension for employees who were hired prior to July 1, 1990 (Public Employees' Retirement System of Idaho, PERSI) is manageable. The university contributed 11.3% of covered payroll for employees, or \$5.6 million in FY 2014, which is not paid by the state through appropriations. The university also offers a defined contribution plan that is offered to employees hired after July 1, 1990, and participates in a single-employer defined other postemployment benefit (OPEB) plan to which it aims to contribute the full actuarially required contribution (ARC) annually, thereby limiting growth of the OPEB liability. UI's FY 2014 annual OPEB cost and ARC was \$3.4 million, to which the university actually made \$3.2 million in contributions. In FY 2013, the university made contributions in excess of its ARC by 19%.

#### GOVERNANCE/MANAGEMENT: STATEWIDE BOARD OF EDUCATION; SOME LEADERSHIP TRANSITION

The eight members of the university's Board of Regents also serve as the Idaho State Board of Education, in addition to responsibilities on four additional boards. Seven members of the combined boards are appointed by the Governor and serve for five-year terms. The elected State Superintendent of Public Instruction serves ex officio as the eighth member of the board for a four-year term.

The university is currently in the midst of transitioning several leadership positions. Positively, the new president who joined in March 2014 brings a business-minded approach and significant experience in research and online educational delivery. UI currently has an interim provost and a vacant director of enrollment position. The university has engaged an outside consultant to oversee and assist with enrollment while it searches for a new director.

#### Outlook

The stable outlook incorporates our expectation of continued, though slowed growth of net tuition revenue, limited future borrowing, maintenance of balanced to positive operating performance and moderate growth in resources through fundraising and retained surpluses.

#### WHAT COULD CHANGE THE RATING UP

An upgrade could result from material growth in financial resources, particularly liquid reserves, providing stronger cushion for debt and operations, combined with stabilization of enrollment and student demand.

#### WHAT COULD CHANGE THE RATING DOWN

An erosion of the university's liquidity, move to operating deficits or substantial new debt issuance could result in negative rating pressure.

#### KEY INDICATORS (Fall 2014 enrollment data and FY 2014 financial data):

Total Full-Time Equivalent Enrollment: 9,792 FTEs

Total Cash and Investments: \$93 million

Total Financial Resources: \$380 million (including foundation)

Total Pro-forma Direct Debt: \$207 million

Total Operating Revenue: \$356 million

Reliance on State Appropriations (% of Moody's operating revenues): 33%

Reliance on Tuition & Auxiliary Revenues (% of Moody's operating revenues): 31%

Monthly Days Cash on Hand: 102 days

Operating Cash Flow Margin: 11.8%

Three Year Average Debt Service Coverage: 2.8 times

State of Idaho Issuer Rating: Aa1/stable

#### RATING METHODOLOGY

The principal methodology used in this rating was U.S. Not-for-Profit Private and Public Higher Education published in August 2011. Please see the Credit Policy page on [www.moodys.com](http://www.moodys.com) for a copy of this methodology.

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## University of Idaho Regents University of Idaho; Public Coll/Univ - Unlimited Student Fees

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# University of Idaho Regents

## University of Idaho; Public Coll/Univ - Unlimited Student Fees

### Credit Profile

US\$17.5 mil GO rev rfdg bnds (University of Idaho) ser 2015A due 04/01/2026

<i>Long Term Rating</i>	A+/Stable	New
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#### University of Idaho Regents, Idaho

University of Idaho, Idaho

University of Idaho Regents (University of Idaho) (BABs)

<i>Long Term Rating</i>	A+/Stable	Affirmed
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#### University of Idaho Regents gen rev bnds ser 2005

<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed
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### Rationale

Standard & Poor's Ratings Services assigned its 'A+' long-term rating to the University of Idaho Regents' series 2015 general revenue refunding bonds, issued for the University of Idaho (UI). At the same time, Standard & Poor's affirmed its 'A+' long-term and underlying rating (SPUR) on UI's existing debt. The outlook on all ratings is stable.

The ratings reflect our view of UI's stable enterprise profile and moderate debt service burden, with broad programming and revenue diversity, solid state operating support, and positive financial operations. In our assessment, offsetting these strengths is a balance sheet that is weak for the rating category, with financial resources that are low relative to expenses and to pro forma debt.

More specifically, positive rating factors include our view of the university's:

- Role as the flagship institution in the state's higher education system, with 29% of fiscal 2014 revenues coming from Idaho;
- Stable enrollment supported by a wide array of program offerings;
- Consistently positive adjusted financial operations on a cash basis, although operations have been inconsistent on a full-accrual basis; and
- Manageable maximum annual debt service (MADS) burden of about 4.2% of fiscal 2014 adjusted expenses.

The above rating strengths are partly offset by our view of UI's:

- Recent significant increase in debt;
- Ongoing budgetary pressures associated with a challenging economy and state funding environment;
- Low levels of financial resources compared to operating expenses and debt for the rating category, with adjusted unrestricted net assets (UNA) in fiscal 2014 representing 19% of operating expenses and only 35% of pro forma debt (\$203.7 million); and
- Relatively small-but-increasing endowment for the rating, of about \$240 million at Oct. 31, 2014.



Net proceeds from the approximately \$18 million series 2015 debt issuance will be used to refund the university's existing series 2005A bonds. Pro forma for this issuance, the university will have total debt of \$203.7 million, all fixed rate and all issued under the same security pledge. UI will have MADS of approximately \$15.3 million (in 2015), which results in a debt burden of 4.2% of adjusted fiscal 2014 operating expenses, which is manageable, in our opinion. UI's bonds are secured by pledged revenues of the university, which Standard & Poor's considers equivalent to an unlimited student-fee pledge. Pledged revenues include a variety of student fees, sales and service revenue, facilities and administration recovery, and other revenues. Pledged revenues equaled:

- \$142.3 million in 2014;
- \$143.3 million in fiscal 2013;
- \$138.3 million in fiscal 2012; and
- \$137.8 million in fiscal 2011.

Management reports that it does not have any plans to issue additional debt during our two-year outlook period, but it does plan to issue approximately \$12 million in new debt in fiscal 2017 for a research and classroom facility. The university will amortize approximately \$13.9 million in principal payments over the next three fiscal years (2015-2017).

We believe that the university is at its debt capacity for the rating, so without growth in financial resources that is commensurate with any future debt, the rating would likely be under pressure. We will evaluate the effects of any future debt when issued.

## Outlook

The stable outlook reflects our expectation that, during the next two years, the university will maintain stable enrollment and balanced operations on a full-accrual basis, make progress in its fundraising, and maintain or improve its financial resources.

Given the university's low financial resources compared to operating expenses and debt for the rating, any weakening of these measures, through significant additional debt or a deteriorated balance sheet, would likely result in a negative outlook or lowered rating. Other credit factors that could lead to a negative rating action, while unlikely, include significant operating deficits on a full-accrual basis or significant weakening of the university's demand and enrollment profile.

In our opinion, it is unlikely that financial characteristics will improve sufficiently to warrant a positive rating action during the outlook period. However, we would view favorably substantial improvement in the university's financial resources relative to operating expenses (to levels that are more commensurate with the 'AA' rating category), growth in overall endowment, and more consistent and solid operating surpluses on a full-accrual basis.

## Enterprise Profile

The University of Idaho was established in 1889, in Moscow, as a territorial university and is the state's oldest institution of higher learning. One of three public universities in Idaho, UI is charged with the primary responsibility for

advanced research and graduate education. UI is Idaho's leading research university attracts grants and contracts of more than \$100 million annually to fund innovative research and teaching, nearly three times the amount of all other Idaho universities. The university comprises 10 colleges: agricultural and life science; art and architecture; business and economics; education; science; engineering; graduate studies; natural resources; law; and letters, arts, and social sciences.

### **Management and governance**

The responsibility for overall management and determination of university policy and standards is vested with the UI Board of Regents, whose members also comprise the Idaho State Board of Education (SBOE). The SBOE serves as the Boise State University Board of Trustees, the Board of Trustees for Idaho State University in Pocatello, the Board of Trustees for Lewis Clark State College in Lewiston, and the State Board for Professional-Technical Education and Vocational Rehabilitation.

The governor appoints seven of the members of the combined boards for five-year terms. The elected state superintendent of public instruction serves ex officio as the eighth member of the combined boards for a four-year term. The UI Board of Regents is responsible for policy direction.

On March 1, 2014, following a national search, Dr. Chuck Staben was named the 18th president of the university. Since 2008, Dr. Staben had served as the provost and vice president for academic affairs at the University of South Dakota. UI's current interim provost, Dr. Katherine G. Aiken, has served as the dean of the College of Letters, Arts, and Social Sciences since 2006 and has worked at UI for 25 years. Management reports that a search is currently underway for a permanent provost. Other members of the senior leadership team have a long tenure with the university, including the finance team, which we view as a credit strength.

We consider the university's budgeting conservative and note that the university presents interim comparative quarterly financial reporting on a modified accrual basis, including management's discussion and analysis (MD&A), which we consider a best practice. Management reports that a debt policy is currently being established at the SBOE level, which will provide guidelines and thresholds for the state universities to follow. We would consider the implementation of a debt policy a best practice.

### **Enrollment and demand**

Enrollment has been declining slightly for the past two years, with an 11,700 headcount for fall 2014 and about 9,800 full-time equivalent (FTE) students. Management reports that applications were up 6.5% for fall 2014, following an increase of 7.1% in fall 2013, and reports that projected applications for fall 2015 also show an increase. Management reports that stabilizing enrollment is a key priority under the new president's leadership. Approximately 80% of students are undergraduates, with the majority attending classes full time. The university accepted 68% of its applicants in fall 2014, with a matriculation rate of 28%, which although still competitive, was weaker than the 44% matriculation rate in fall 2010. Student quality is slightly above average, with an average ACT score of 23.6. The freshman-to-sophomore retention rate is good at 77%, and the five-year graduation rate is 54%. Approximately 66% of the students are from Idaho; another 21% are from Alaska, California, Montana, Oregon, and Washington. Management reports that approximately 40% of its undergraduate students received Pell Grants in fall 2014.



**Government-related entities**

In accordance with our criteria for government-related entities (GREs), we based our view of a "low" likelihood of extraordinary government support on our assessment of UI's "weak" link with Idaho, given the state's limited involvement with the day-to-day operations of the university, history of annual operating appropriations, and no history of extraordinary support. We also based our assessment on UI's "limited" role in the state's economy compared with that of other state GREs, despite UI's position as a flagship institution of higher education and its general contributions to economic development. Pursuant to the GRE criteria, a low likelihood of extraordinary support from Idaho does not result in UI's 'A+' stand-alone credit profile being raised.

**Financial Profile****State appropriations and tuition**

State appropriations, which represented about 29% of fiscal 2014 operating revenues, are one of the university's largest revenue sources. After a couple of years of cuts and holdbacks, state appropriations appear to be on the rise again -- increasing to \$107 million in fiscal 2013, \$109.5 million in fiscal 2014, and \$116.5 million expected for fiscal 2015. Student tuition and fees, combined with associated auxiliaries, comprise 30% of university revenues and research grants account for another 21%. For the 2014-2015 school year, total tuition and fees were raised 4% to \$6,784 per year for resident undergraduates, a level we consider affordable.

**Financial operations**

The university's financial operations have been consistently positive on a cash basis, although inconsistent on a full-accrual basis. In fiscal 2014, after adjustments for unrealized/realized gains and losses, the university's operating results on a full-accrual basis resulted in a surplus of \$8.4 million; this compares positively to similarly-adjusted operations in fiscal 2013 of \$1.4 million and essentially break-even results in fiscal 2012. Management reports that it expects fiscal 2015 operations to be similar to fiscal 2014 results.

**Financial resources**

During fiscal 2012, management conducted a thorough analysis of the university's net asset balances and categories. In reviewing guidance under GASB-34 concerning the proper classification of net assets, management concluded that it had historically been overly conservative in defining and classifying certain available assets. Accordingly, certain reclassifications to fiscal 2011 net asset category balances were made to more accurately align with governmental reporting standards and 2012 presentation.

For fiscal 2014, when adjusted to include the foundation's \$6 million of unrestricted net assets, the university's financial resources remained low for the rating category with approximately \$71 million in adjusted unrestricted net assets, equal to 19% of adjusted operating expenses and 35% of pro forma debt.

**Investments**

As of Oct. 31, 2014, the university's endowment had a market value of \$240 million. The endowment draw remains conservative, in our opinion, at 4.5% of a rolling 12-month market value average. While the university does not draw down on its endowment funds as part of planned operating expenses, the endowment distribution for fiscal 2014 for similar usage was \$9 million.



The university has recently made strides to improve its fundraising efforts, which should ultimately increase its endowment over time. The university is in the midst of a \$225 million capital campaign that is scheduled to end in December 2014 and management expects to exceed its goal. The university raises more than \$20 million annually in gifts and fundraising.

### Pension and other postemployment benefits (OPEBs)

The university's retirement plan for a certain population of employees is run through the state-created Public Employee Retirement System of Idaho (PERSI). For non-PERSI eligible employees, the university offers an optional retirement plan and contributes a certain percentage of the total payroll. Funding for OPEBs is provided by a combination of contributions from the university, employee, and the state, and employee benefits are capped.

Beginning with the fiscal year starting on July 1, 2014, UI will be required to record a liability and expense equal to its proportionate share of the collective net pension liability and expense of PERSI due to the implementation of GASB 68. PERSI has not yet determined the university's or other cost-sharing employers' proportionate shares of such liability, and the university cannot determine at this time what its proportionate share will be or what impact any additional funding obligation of the university with respect to its proportionate share will have. UI expects to receive a report from PERSI as to the allocation and effect of PERSI's unfunded liability in early calendar year 2015, and management does not expect the liability to be significant.

The university reports it has taken proactive steps to effectively manage and reduce its liability for obligation of OPEBs related to retiree health. UI's GASB liability was recorded and recognized on its financial statements for the first time in fiscal 2008. Program changes -- which include steeper eligibility requirements, retiree cost-sharing, integration with Medicare prescription drug programs, and elimination of some future benefits -- reduced the annual required contribution (ARC) from projections of \$7.2 million as forecasted in fiscal 2008 to \$3.7 million for fiscal 2013. The university has elected to fully fund its ARC in each fiscal year.

Table 1

University of Idaho						
Enrollment and demand	-- Fiscal year ended June 30 --					-- Medians --
	2015	2014	2013	2012	2011	Public colleges & universities rated 'A' in 2013
Headcount	11,702	12,024	12,420	12,312	12,302	12,911
Full-time equivalent	9,792	10,020	10,105	10,491	10,398	10,622
Freshman acceptance rate (%)	67.6	64.7	65.7	60.9	68.1	70.9
Freshman matriculation rate (%)	27.7	31.5	33	32.5	43.7	37.4
Undergraduates as a % of total enrollment (%)	79.3	79.3	81.5	79.7	80	86.1
Freshman retention (%)	77	78	77	80	81	72.4
Graduation rates (five years) (%)	54	52	56	51	55	43.1
Income statement						
Adjusted operating revenue (\$000s)	N.A.	376,528	370,179	365,564	360,746	MNR
Adjusted operating expense (\$000s)	N.A.	368,165	368,809	366,482	359,858	MNR
Net adjusted operating income (\$000s)	N.A.	8,363	1,370	-918	888	MNR

Table 1

University of Idaho (cont.)						
Estimated operating gain/loss before depreciation (\$000s)	N.A.	33,587	24,549	21,651	23,038	MNR
Change in unrestricted net assets (UNA; \$000s)	N.A.	7,904	-6,843	11,241	26,415	MNR
State operating appropriations (\$000s)	N.A.	109,404	105,846	100,825	103,804	MNR
State appropriations to revenue (%)	N.A.	29.1	28.6	27.6	28.8	26.5
Student dependence (%)	N.A.	30.4	31.9	33.3	31.1	MNR
<b>Debt</b>						
Outstanding debt (\$000s)	N.A.	155,771	162,971	158,739	161,552	123,000
Proposed debt (\$000s)	N.A.	N.A.	N.A.	N.A.	N.A.	MNR
Total pro forma debt (\$000s)	N.A.	203,771	N.A.	N.A.	N.A.	MNR
Pro forma MADS	N.A.	15,058	N.A.	N.A.	N.A.	MNR
Current debt service burden (%)	N.A.	3.91	5.75	3.47	3.33	4.1
Current MADS burden (%)	N.A.	4.09	N.A.	3.68	3.6	MNR
Pro forma MADS burden (%)	N.A.	4.09	N.A.	N.A.	N.A.	MNR
<b>Financial resource ratios</b>						
Endowment market value (\$000s)	N.A.	N.A.	N.A.	187,576	190,748	33,348
Related foundation market value (\$000s)	N.A.	282,922	243,417	148,174	150,781	68,500
Cash and investments (\$000s)	N.A.	95,446	88,660	85,405	86,533	MNR
UNA (\$000s)	N.A.	65,015	57,111	63,954	52,713	MNR
Adjusted UNA (\$000s)	N.A.	70,962	62,161	69,174	58,096	MNR
Cash and investments to operations (%)	N.A.	25.9	24	23.3	24	47
Cash and investments to debt (%)	N.A.	61.3	54.4	53.8	53.6	93.3
Cash and investments to pro forma debt (%)	N.A.	46.8	N.A.	N.A.	N.A.	MNR
Adjusted UNA to operations (%)	N.A.	19.3	16.9	18.9	16.1	MNR
Adjusted UNA plus debt service reserve to debt (%)	N.A.	45.6	38.1	43.6	36	53.3
Adjusted UNA plus debt service reserve to pro forma debt (%)	N.A.	34.8	N.A.	N.A.	N.A.	MNR
Average age of plant (years)	N.A.	15.3	15.7	15.3	14.7	12.7
OPEB liability to total liabilities (%)	N.A.	N.A.	0	N.A.	0	4.8

N.A. -- not available. MNR -- median not reported. MADS -- maximum annual debt service. Net operating margin = 100\*(net adjusted operating income/adjusted operating expense). Tuition dependence = 100\*(gross tuition revenue/adjusted operating revenue). Current debt service burden = 100\*(current debt service expense/adjusted operating expenses). Current MADS burden = 100\*(maximum annual debt service expense/adjusted operating expenses). Cash and investments = cash + short-term & long-term investments. Adjusted UNA = Unrestricted net assets + unrestricted net assets of the foundation. Average age of plant = accumulated depreciation/depreciation & amortization expense.

## Related Criteria And Research

### Related Criteria

- USPF Criteria: Higher Education, June 19, 2007
- General Criteria: Rating Government-Related Entities: Methodology And Assumptions, Dec. 9, 2010



## Ratings Detail (As Of December 5, 2014)

**University of Idaho Regents, Idaho**

University of Idaho, Idaho

University of Idaho Regents (University of Idaho) adj

*Long Term Rating*

A+/Stable

Affirmed

University of Idaho Regents (University of Idaho) gen rev &amp; rfdg bnds

*Long Term Rating*

A+/Stable

Affirmed

**University of Idaho Regents (University of Idaho) adj rage gen rev bnds ser 2007A***Unenhanced Rating*

A+(SPUR)/Stable

Affirmed

Many issues are enhanced by bond insurance.

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**ESCROW AGREEMENT**

Dated as of January \_\_, 2015

Between

**THE REGENTS OF THE UNIVERSITY OF IDAHO**

and

**WELLS FARGO BANK, NATIONAL ASSOCIATION**

---

**ESCROW AGREEMENT**

This ESCROW AGREEMENT, dated as of January \_\_, 2015, between the REGENTS OF THE UNIVERSITY OF IDAHO (the "Issuer"), a state institution of higher education and body politic and corporate under the laws of the State of Idaho and Wells Fargo Bank, National Association (in its capacity as escrow agent hereunder, the "Escrow Agent"), a national banking association organized and existing under the laws of the United States of America;

## W I T N E S S E T H

WHEREAS, the Issuer has heretofore issued its General Revenue Refunding Bonds, Series 2005A (the "2005A Bonds" or "Prior Obligations");

WHEREAS, the Issuer has determined to cause the current refunding of the Prior Obligations with maturity dates, principal amounts, and interest rates as set forth in Exhibit "A" attached hereto;

WHEREAS, in order to accomplish the current refunding, the Issuer has authorized the execution and delivery of the Issuer's General Revenue Refunding Bonds, Series 2015A (the "Bonds") in the aggregate principal amount of \$ \_\_, \_\_, 000 pursuant to the provisions of Issuer's General Bond Resolution adopted on November 22, 1991 as amended, and Supplemental Resolution adopted on December 18, 2014 and related Terms Certificate (collectively, the "Resolution");

WHEREAS, the Issuer and the Escrow Agent are entering into this Escrow Agreement in order to provide for the refunding and defeasance of certain of the Prior Obligations; and

NOW, THEREFORE, to secure all Prior Obligations referenced in Exhibit "A", the payment of the principal thereof and interest thereon, the Issuer does hereby sell, assign, transfer, set over and pledge unto the Escrow Agent its successors in the trust and its assigns forever, all of the right, title and interest of the Issuer in and to all amounts in the funds established hereunder;

TO HAVE AND TO HOLD the same and any other revenues, property, contracts or contract rights, accounts receivable, chattel paper, investments, general intangibles or other rights and the proceeds thereof, which may, by delivery, assignment or otherwise, be subject to the lien and security created by this Escrow Agreement;

IN ESCROW AND TRUST, NEVERTHELESS, for the equal and ratable benefit and security of all present and future holders of such Prior Obligations, without preference, priority or distinction as to such Prior Obligations.

**SECTION 1. Creation of Escrow Fund.** There is hereby created and established with the Escrow Agent a special and irrevocable escrow fund designated the University of Idaho Series 2015A Refunding Escrow Fund (the "Escrow Fund") to be held by the Escrow Agent as a trust fund for the benefit of the owners of said Prior Obligations. The Escrow Fund shall be held by the Escrow Agent separate and apart from other funds of the Issuer and of the Escrow Agent.

**SECTION 2. Receipt of Funds.** The Escrow Agent hereby acknowledges receipt of the sum of \$\_\_\_\_\_ from the proceeds of the Bonds.

**SECTION 3. Application of Proceeds of Bonds.**

- (a) Upon receipt by the Escrow Agent of the amount of the proceeds of the Bonds as set forth in Section 2 hereof the Escrow Agent shall immediately deposit said amount in the Escrow Fund.
- (b) The amount of \$\_\_\_\_\_ shall be held in cash.
- (c) In reliance on the computations prepared by George K. Baum & Company (as Underwriter), and confirmed by Piper Jaffray & Co. (as Municipal Advisor to the Issuer), the Issuer represents that the amounts deposited in the Escrow Fund pursuant to this Escrow Agreement, will provide sufficient funds to redeem on April 1, 2015 all of the 2005A Bonds set forth in Exhibit "A" and to pay interest thereon through April 1, 2015.

**SECTION 4. Issuance Costs.** All costs and expenses related to the issuance of the Bonds shall be paid from the proceeds of the Bonds or other legally available sources of the Issuer.

**SECTION 5. Application of Escrow.** The Escrow Agent agrees that the amounts deposited in the Escrow Fund pursuant to Section 3 hereof and the interest income to be earned thereon and any other moneys and investments deposited in the Escrow Fund will be held in trust for the holders of the said Prior Obligations described on Exhibit "A". The Escrow Agent shall cause to be applied the cash held in the Escrow Fund including \$\_\_\_\_\_ from the reserve fund of the 2005A Bonds, to the redemption on April 1, 2015 of all said 2005A Bonds set forth in Exhibit "A", and payment of all interest due thereon until April 1, 2015.

**SECTION 6. Investment of Escrow Funds.**

- (a) Except as provided in Section 3 hereof, the Escrow Agent shall have no power or duty to invest any funds held under this Escrow Agreement.
- (b) The Issuer hereby covenants that no part of the moneys or funds held at any time in the Escrow Fund shall be used directly or indirectly to acquire any securities or obligations, the acquisition of which would cause the Bonds or the Prior Obligations or the obligations to which they relate to be "arbitrage bonds" as defined in subsections (a)

and (b) of Section 148 of the Internal Revenue Code of 1986, as amended, and to be subject to treatment under subsection 103(b)(2) of the Internal Revenue Code of 1986 as obligations not described in subsection 103(a)(1).

**SECTION 7. Notice to Bond Holders and Redemption.** The Escrow Agent acknowledges receipt of a certified copy of the Resolution, in which the refunding of the said Prior Obligations is approved, and the Issuer hereby irrevocably directs the Escrow Agent to send the redemption notice and notices of the refunding of the Prior Obligations as described herein. The Escrow Agent further agrees for each of the Prior Obligations set forth in Exhibit "A" hereto, to cause a notice of the refunding of the Prior Obligations, in the applicable form attached hereto in Exhibit "B" to be mailed as soon as possible by certified mail, postage prepaid, to all registered owners of the Prior Obligations, to each insurer of the Prior Obligations, to Moody's Investment Service, New York, New York, and to Standard and Poor's, New York, New York and by certified or registered mail or overnight delivery service, to all registered securities depositories and to national information services that disseminate redemption notices.

The Escrow Agent will cause a notice of redemption, in substantially the form as provided in Exhibit "C" attached hereto, of the 2005A Bonds set forth in Exhibit "A" hereto to be mailed by the Trustee to all registered owners of the said 2005A Bonds and the insurer for the 2005A Bonds at least thirty-five (35) days and not more than sixty (60) days prior to April 1, 2015. A similar notice shall be sent by certified or registered mail simultaneously and preferably not less than thirty-five (35) days prior to the said redemption date, or as soon thereafter as possible, to all registered securities depositories then in the business of holding substantial amounts of obligations of types comprising the said Prior Obligations (such depositories including Depository Trust Company of New York, New York and other similar holders) and to one or more national information services that disseminate notices of redemption of obligations such as the Prior Obligations (such as MUNIFACTS). On April 1, 2015, the Escrow Agent shall cause to be redeemed from monies in the Escrow Fund all 2005A Bonds set forth in Exhibit "A".

**SECTION 8. Disposition of Remaining Amounts, If Any.** On or after April 1, 2015, after payment of the principal of, and interest on, all the Prior Obligations set forth in Exhibit "A" has been made, any remaining moneys and securities in the Escrow Fund shall be transferred by the Escrow Agent to the Issuer, and to such other person or applied to such other purpose as may be approved in a written opinion of nationally recognized bond counsel satisfactory to the Issuer to the effect that such other application of such amounts will not cause the Bonds to become "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986. Upon the taking of all the actions as described herein by the Escrow Agent and the consummation of the redemptions contemplated by this Agreement, the Escrow Agent shall have no further obligations or responsibilities hereunder to the Issuer, the owners of the Prior Obligations or to any other person or persons in connection with this Agreement.

**SECTION 9. Lien and Irrevocable Pledge; Perfection of Security.** The Escrow Fund created

hereby is irrevocably pledged to the payment of the Prior Obligations and the holders of the Prior Obligations shall have an express lien on and security interest in all amounts deposited in the Escrow Fund, until used and applied in accordance herewith. The Issuer agrees that financing statements may be filed with respect to this Escrow Agreement in such manner and in such places as may be required by law to fully protect the security of the holders of the Prior Obligations and the right, title and interest of the Escrow Agent, to all amounts deposited in the Escrow Fund, and shall take or cause to be taken all action necessary to preserve the aforesaid security so long as any of the Prior Obligations remain unpaid.

#### **SECTION 10. Indemnification; Escrow Agent Compensation and Liability; Resignation.**

(a) The Escrow Agent shall be compensated for its reasonable fees, expenses and disbursements, including legal fees, as more particularly set out in Exhibit "D" attached hereto. This constitutes a right to receive compensation notwithstanding, the Escrow Agent acknowledges that it has no claim for any such payment under the Resolution, and that it has no lien on the moneys in the Escrow Fund for any such payment. On April 1, 2015, the Escrow Agent shall submit to the Issuer a report covering all money it shall have received and all payments it shall have made or caused to be made hereunder.

If the Escrow Agent renders any service hereunder not provided for in this Agreement, or the Escrow Agent is made a party to or intervenes in any litigation pertaining to this Agreement or institutes interpleader proceedings relative hereto, the Escrow Agent shall be compensated reasonably by the Issuer for such extraordinary services and reimbursed for any and all claims, liabilities, losses, damages, fines, penalties and expenses, including out-of-pocket and incidental expenses and legal fees and expenses occasioned thereby.

(b) The Escrow Agent may act in reliance upon any signature believed by it to be genuine, and may assume that any person purporting to give any notice or receipt or advice or make any statements in connection with the provisions hereof has been duly authorized to do so.

(c) The Escrow Agent may act relative hereto in reliance upon advice of nationally recognized bond counsel in reference to any matter connected herewith, and shall not be liable for any mistake of fact or error of judgment, or for any acts or omissions of any kind, unless caused by its negligence or willful misconduct.

None of the provisions contained in this Escrow Agreement shall require the Escrow Agent to use or advance its own funds in the performance of any of its duties or the exercise of any of its rights or powers hereunder. The liability of the Escrow Agent to transfer funds for the payment of the principal of and interest on the Prior Obligations shall be limited to the proceeds of the cash balances from time to time on deposit in the Escrow Fund. Notwithstanding any provision contained herein to the contrary, the Escrow Agent shall have no liability whatsoever for the insufficiency of funds from time



to time in the Escrow Fund. The Escrow Agent makes no representations as to the value, condition or sufficiency of the Escrow Fund, or any part thereof, or as to the title of the Issuer thereto, or as to the security afforded thereby or hereby, and the Escrow Agent shall not incur any liability or responsibility in respect to any of such matters.

The Escrow Agent's liabilities and obligations in connection with this Escrow Agreement are confined to those specifically described herein

The recitals herein and in the proceedings authorizing the Bonds shall be taken as the statements of the Issuer and shall not be considered as made by, or imposing any obligation or liability upon, the Escrow Agent.

(d) The Escrow Agent may resign and be discharged of its duties hereunder provided that: (i) it has given thirty (30) days written notice to the Issuer of such resignation; (ii) the Issuer has appointed a successor to the Escrow Agent hereunder; (iii) the Escrow Agent and the Issuer have received an instrument of acceptance executed by the successor to the Escrow Agent and (iv) the Escrow Agent has delivered to its successor hereunder all of the escrowed documents, moneys and investments, if any, held by the Escrow Agent in the Escrow Fund. Such resignation shall take effect only upon the occurrence of all of the events listed in clauses (i) through (iv) above. Upon receipt by the Issuer of the written notice described in clause (i) above, the Issuer shall use its best efforts to obtain a successor to the Escrow Agent hereunder as soon as possible.

If, in a proper case, no appointment of a successor Escrow Agent shall be made pursuant to the foregoing provisions of this section within 60 days after a vacancy shall have occurred, the owner of any Prior Obligation or the Escrow Agent may apply to any court of competent jurisdiction to appoint a successor Escrow Agent. Such court may thereupon, after such notice, if any, as it may deem proper, prescribe and appoint a successor Escrow Agent.

Should the Escrow Agent consolidate, merge with, transfer or sell substantially all of its corporate trust business to any bank or banks, trust company or other banking institution, such consolidation, merger, transfer or sale shall in no way affect the rights of the parties hereto, or the owners of any of the Prior Obligations, and such succeeding corporation shall be the Escrow Agent under this Agreement, without the execution or filing of any paper or any further act on the part of the parties hereto, anything in this Agreement to the contrary notwithstanding.

(e) To the extent permitted by law, the Issuer covenants and agrees to indemnify and save the Escrow Agent harmless against any loss, expense or liability which it may incur arising out of or in the exercise or performance of its duties and powers hereunder, including the costs and expenses of defending against any claim or liability, or enforcing any of the rights or remedies granted to it under the terms of this Agreement, excluding any losses or expenses which are due to the Escrow Agent's negligence or willful

misconduct. The obligations of the Issuer under this Section 10 shall survive the resignation or removal of the Escrow Agent under this Agreement and the payment of the Prior Obligations and discharge under this Agreement.

(f) THE ESCROW AGENT SHALL NOT BE LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY (I) DAMAGES, LOSSES OR EXPENSES ARISING OUT OF THE SERVICES PROVIDED HEREUNDER, OTHER THAN DAMAGES, LOSSES OR EXPENSES WHICH HAVE BEEN FINALLY ADJUDICATED TO HAVE DIRECTLY RESULTED FROM THE ESCROW AGENT'S NEGLIGENCE OR WILLFUL MISCONDUCT, OR (II) SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR LOSSES OF ANY KIND WHATSOEVER (INCLUDING WITHOUT LIMITATION LOST PROFITS), EVEN IF THE ESCROW AGENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES AND REGARDLESS OF THE FORM OF ACTION.

**SECTION 11. Governing Law, Counterparts, Termination.** This Escrow Agreement may be executed in several counterparts as part of one and the same instrument and shall be governed by the laws of the State of Idaho. This Escrow Agreement shall terminate when the principal of, and premium and interest on, all the said Prior Obligations has been paid.

**SECTION 12. Amendments or Supplements.** This Escrow Agreement shall not be repealed, revoked, rescinded, altered, amended or supplemented in whole or in part without the written consent of 100% of the then holders of the said unpaid Prior Obligations and the insurer for the Prior Obligations, and the written consent of the Escrow Agent; provided, however, that this Escrow Agreement may be amended with the consent of the Issuer and the Escrow Agent with written notice to Trustee for the Prior Obligations to correct, cure or supplement any ambiguous or defective provision in a manner not inconsistent with the security of the holders of the said Prior Obligations, upon delivery of an opinion of nationally recognized bond counsel satisfactory to the Issuer that such amendment will not adversely affect the exemption from federal income tax of the interest on either the Prior Obligations or the Bonds. The Escrow Agent shall give notice (including draft copies of such amendments) to the bond insurers of the Prior Obligations, Moody's Investors Service, Standard & Poor's or any other rating service then rating the Bonds or the Prior Obligations, as the case may be, of any amendment proposed pursuant to this Section if the Bonds or the Prior Obligations have been assigned a rating by either such agency.

**SECTION 13. Severability.** If any one or more of the covenants or agreements provided in this Escrow Agreement on the part of the Issuer or the Escrow Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Escrow Agreement. In such event, the Escrow Agent shall give notice thereof to Moody's Investors Service and Standard and Poor's.

**SECTION 14. Successors and Assigns and Bond Insurer are Third Party Beneficiaries.**

All of the covenants, promises and agreements in this Escrow Agreement contained by or on behalf of the Issuer or the Escrow Agent shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not. The bond insurer for the Prior Obligations shall be deemed third party beneficiaries of this Escrow Agreement.

**SECTION 15. Headings.** Any headings preceding the text of the several Sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Escrow Agreement, nor shall they affect its meaning, construction or effect.

**SECTION 16. Notices.** Any notices or communications to or among the Escrow Agent, the Issuer or the Trustee of Prior Obligations may be given as follows:

To the Issuer: University of Idaho  
Finance and Administration  
Administration Building, Room 213  
Moscow, Idaho 83844-3166  
Attention: Vice President for Finance  
and Administration  
Telephone: (208) 885-6530 Fax: (208) 885-8931.

To the Escrow Agent: Wells Fargo Bank, National Association  
1700 Lincoln Street, 10<sup>th</sup> Floor  
MAC C7300-107  
Denver, Colorado 80203  
Attn: Corporate Trust Department  
Telephone: (303) 863-5235 Fax: (303) 863-5645

To the Trustee of Prior Obligations: Wells Fargo Bank, National Association  
1700 Lincoln Street, 10<sup>th</sup> Floor  
MAC C7300-107  
Denver, Colorado 80203  
Attn: Corporate Trust Department  
Telephone: (303) 863-5235 Fax: (303) 863-5645

The address for insurer of the Prior Obligations shall be that on file with the Escrow Agent which is also Trustee for the Prior Obligations. Any person may, by written notice to the other persons listed above, designate a different address or telephone number(s) to which subsequent notices or communications should be sent.

IN WITNESS WHEREOF, the parties hereto have each caused this Escrow Agreement to be executed by their duly authorized officers as of the date first above written.

**THE REGENTS OF THE UNIVERSITY**

**OF IDAHO**

By: \_\_\_\_\_  
Bursar

**WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Escrow Agent**

By: \_\_\_\_\_  
AUTHORIZED OFFICER

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**EXHIBIT "A"**Schedule of the Regents of the University of Idaho  
General Revenue Refunding Bonds, Series 2005A

<u>Maturity Date</u> <u>(April 1)</u>	<u>Par Amount</u>	<u>Initial Term</u> <u>Interest Rate</u>	<u>CUSIP</u>
2015	\$1,870,000	5.000%	914318 ZE3
2016	1,955,000	5.000	914318 ZF0
2017	2,060,000	5.000	914318 ZG8
2018	2,160,000	5.000	914318 ZH6
2019	2,265,000	5.000	914318 ZJ2
2020	1,860,000	5.000	914318 ZK9
2021	1,950,000	5.000	914318 ZL7
2022	2,050,000	4.000	914318 ZM5
2023	1,445,000	4.000	914318 ZN3
2024	1,500,000	4.125	914318 ZP8
2025	1,555,000	4.125	914318 ZQ6
2026	1,615,000	4.125	914318 ZR4

NOTE: The above 2005A Bonds are in denominations of \$5,000 each, or integral multiples thereof, and are not callable prior to April 1, 2015. The 2005A Bonds shall be redeemed at the redemption price of par plus accrued interest to the redemption date.

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**EXHIBIT "B"**

## FORM OF NOTICE OF REFUNDING

Regents of the University of Idaho  
General Revenue Refunding Bonds, Series 2005A

NOTICE IS HEREBY GIVEN that, for the payment of the interest and principal of the above-designated Bonds, (the "Bonds") as are more fully described on Schedule "1" attached hereto, funds have been deposited in escrow with Wells Fargo Bank, National Association, and maintained in cash. The projected principal payments to be received from such investments and the projected interest income therefrom have been calculated to be sufficient to pay the interest on all said Bonds through April 1, 2015, and to redeem on April 1, 2015, the Bonds which mature on April 1, 2015 and thereafter at the redemption price of 100% of the par amount thereof plus accrued interest to the date of redemption.

DATED this \_\_\_\_\_ day of January, 2015.

**WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Trustee**

By: \_\_\_\_\_  
Authorized Officer

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**SCHEDULE "1"**  
TO NOTICE OF REFUNDING

Regents of the University of Idaho  
General Revenue Refunding Bonds, Series 2005A

<u>Maturity Date</u> <u>(April 1)</u>	<u>Par Amount</u>	<u>Initial Term</u> <u>Interest Rate</u>	<u>CUSIP</u>
2015	\$1,870,000	5.000%	914318 ZE3
2016	1,955,000	5.000	914318 ZF0
2017	2,060,000	5.000	914318 ZG8
2018	2,160,000	5.000	914318 ZH6
2019	2,265,000	5.000	914318 ZJ2
2020	1,860,000	5.000	914318 ZK9
2021	1,950,000	5.000	914318 ZL7
2022	2,050,000	4.000	914318 ZM5
2023	1,445,000	4.000	914318 ZN3
2024	1,500,000	4.125	914318 ZP8
2025	1,555,000	4.125	914318 ZQ6
2026	1,615,000	4.125	914318 ZR4

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**EXHIBIT "C"**NOTICE OF REDEMPTION  
To the Owners ofRegents of the University of Idaho  
General Revenue Refunding Bonds, Series 2005A

NOTICE IS HEREBY GIVEN, pursuant to the provisions of the resolution adopted by the Regents of the University (the "Issuer") on November 22, 1991 as amended and supplemented by a supplemental resolution of the Issuer dated December 18, 2014 (collectively, the "Resolution"), authorizing the issuance of the Issuer's below described bonds (the "Bonds"). All of the following Bonds will be redeemed as provided in the Resolution on April 1, 2015 (the "Redemption Date"), at a redemption price equal to 100% of the par amount thereof plus accrued interest to the Redemption Date:

<u>Maturity Date</u> <u>(April 1)</u>	<u>Par Amount</u>	<u>Interest Rate</u>	<u>CUSIP</u>
2015	\$1,870,000	5.000%	914318 ZE3
2016	1,955,000	5.000	914318 ZF0
2017	2,060,000	5.000	914318 ZG8
2018	2,160,000	5.000	914318 ZH6
2019	2,265,000	5.000	914318 ZJ2
2020	1,860,000	5.000	914318 ZK9
2021	1,950,000	5.000	914318 ZL7
2022	2,050,000	4.000	914318 ZM5
2023	1,445,000	4.000	914318 ZN3
2024	1,500,000	4.125	914318 ZP8
2025	1,555,000	4.125	914318 ZQ6
2026	1,615,000	4.125	914318 ZR4

Interest on the Bonds to be redeemed shall cease to accrue from and after the Redemption Date.

Redemption of the Bonds is conditional upon receipt by the undersigned Paying Agent on or before the Redemption Date of the full amount of said redemption price. Upon presentation and surrender of the Bonds to be redeemed and receipt by Paying Agent of the full redemption price, the redemption price is due and payable and payment of the redemption price will be made.

Payment of the redemption price on the Bonds to be redeemed will be made upon presentation and on surrender of the Bonds on or before the Redemption Date at the office of WELLS FARGO BANK, NATIONAL ASSOCIATION, at the following addresses, based on the method of presentation:



Registered/Certified Mail:

Wells Fargo Bank, N.A.  
Corporate Trust Operations  
P.O. Box 1517  
Minneapolis, MN 55480-1517

Air Courier:

Wells Fargo Bank, N.A.  
Corporate Trust Operations  
N9303-121  
6th & Marquette Avenue  
Minneapolis, MN 55479

In person:

Wells Fargo Bank, N.A.  
Northstar East Building  
608 2nd Ave. So., 12th Fl.  
Minneapolis, MN

**WELLS FARGO BANK, NATIONAL  
ASSOCIATION**, as Trustee, Paying Agent and  
Registrar for the Bonds

By: \_\_\_\_\_  
Authorized Officer

**EXHIBIT "E"**

FEE SCHEDULE

University of Idaho

REFUNDING ESCROW

ESCROW AGENT FEE

ADMINISTRATIVE FEE (one time) payable at closing .....\$\_\_\_\_\_

Plus out-of-pocket expenses, including but not limited to publication and other expenses of the notice and proceedings for redemption of Bonds, billed at the time such costs are incurred.

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**BUSINESS AFFAIRS AND HUMAN RESOURCES**  
**DECEMBER 18, 2014**

---

**SUBJECT**

FY 2015 Idaho Opportunity Scholarship Maximum Award Amount

**REFERENCE**

December 2013

Board set the maximum award amount, student contribution amount, and cost of attendance for FY2015

**APPLICABLE STATUTE, RULE, OR POLICY**

Idaho Code § 33-4303  
IDAPA 08.01.13.300.02

**BACKGROUND/ DISCUSSION**

The Board annually sets the maximum award amount, the student contribution amount, and the cost of attendance for the Opportunity Scholarship. The maximum award amount for FY15 was set at \$3,000 at the December 2013 Board meeting. Fiscal year 2015 is the first year of implementation of the consolidated scholarship program. This first year the Board received 1,422 eligible applicants, of which 1,297 were eligible for the maximum \$3,000 award. The scholarship methodology calculates the amount of the award based on the cost of attendance, minus the student/family contribution amount and any other scholarship awards the student may have received. The amount of the award is then the remainder of the balance up to the maximum award amount or actual costs of attendance, whichever is less. Using this model, 125 students were not eligible for the maximum award amount.

When the maximum award amount is set it is based on an estimate of students that will be eligible for renewal of existing scholarship awards plus new applications. Due to the changes in the scholarship program, staff did not have previous year data to use to calculate the potential number of eligible renewals and new applicants for FY15, so the FY15 award amount was recommended to be set at the same level as FY14. Historically, the Opportunity Scholarship has been oversubscribed. Now that initial awards have been made and verified, however, there is a balance of funds remaining for FY15 totaling \$943,367. Any remaining balance is reverted back to the state general fund at the conclusion of the fiscal year. Staff is requesting the Board increase the maximum award amount for FY15, allowing for the distribution of the remaining funds. Based on these calculations, Board staff recommends a \$750 increase in the maximum award amount for a total maximum award amount on \$3,750.

**IMPACT**

Raising the maximum amount award amount at this time will allow Board staff to notify the students and institutions of the additional amounts prior to the start of the Spring semester and allow some students to then decrease their student loans by a like amount. Increasing this maximum award amount will benefit 1,297 students.

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**STAFF COMMENTS AND RECOMMENDATIONS**

Staff recommends approval.

**BOARD ACTION**

I move to approve the maximum award amount of the Idaho Opportunity Scholarship, at \$3,750 per year for fiscal year 2015.

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

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<b>TAB</b>	<b>DESCRIPTION</b>	<b>ACTION</b>
<b>1</b>	<b>SUPERINTENDENT’S UPDATE</b>	Information Item
<b>2</b>	<b>ISAT ACHIEVEMENT LEVEL SCORES (CUT SCORES)</b>	Motion to Approve
<b>3</b>	<b>IDAPA 08.02.02.111.06.j. – GRADE 9 ASSESSMENT - WAIVER</b>	Motion to Approve
<b>4</b>	<b>READING LITERACY TASK FORCE RECOMENDATIONS</b>	Information Item
<b>5</b>	<b>SPECIAL EDUCATION MANUAL</b>	Motion to Approve

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**SUBJECT**

Superintendent of Public Instruction - Update to the State Board of Education.

**BACKGROUND/DISCUSSION**

Superintendent of Public Instruction, Tom Luna, will provide a review of accomplishments and challenges over the last eight years.

**BOARD ACTION**

This item is for informational purposes only. Any action will be at the Board's discretion.



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**SUBJECT**

Achievement Levels Descriptors (ALD) for Idaho Standards Achievement Tests grades 3-8 and 11

**REFERENCE**

May 30, 2007

Adoption by Board of both Proficiency Levels and Performance Level Descriptors (PLDs) for math and reading in grades 3 through 8 and 10.

**APPLICABLE STATUTE, RULE, OR POLICY**

Section 33-105, Idaho Code and Section 33-1612, Idaho Code  
IDAPA 08.02.03 – Rules Governing Thoroughness

**BACKGROUND/DISCUSSION**

The Idaho State Board of Education has been administering the Idaho Standards Achievement Tests (ISAT) since the spring of 2003.

Idaho is part of the Smarter Balanced Assessment consortium that has created ISAT items, test blueprints, and developed achievement levels with significant input from Idaho teachers. Idaho was part of the original grant to develop a balanced assessment system that included more than just multiple choice items and aligned to higher standards in English language arts and mathematics. This system includes not only the summative assessment but access to the Digital Library and the interim assessments.

The new ISAT was field tested by all Idaho students last spring. The individual items were evaluated as well as student performance on those items. Using student performance and the achievement level descriptors, achievement levels are determined and are based on a vertical scale ranging from 2,000 – 3,000. This scale will allow student progress to be evaluated over time with consistency.

As described by the consortium, the process of determining achievement levels involved numerous educators:

“To create the achievement levels, Smarter Balanced organized an unprecedented level of educator and public input, involving thousands of interested constituents, using a rigorous process known as the “bookmark procedure.”

During an in-person panel, held in Dallas, Texas, close to 500 teachers, school leaders, higher education faculty, parents, business and community leaders reviewed test questions and determined the threshold scores for four achievement levels for each grade and subject area. Member states had representatives at each grade level for grades 3 through 8 and high school. Educators with experience teaching English language learners, students with

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disabilities, and other traditionally under-represented students participated to help ensure that the achievement levels are fair and appropriate for all students.” Twenty educators from Idaho were part of the in-person panel, representing math and English Language Arts (ELA) as well as grades 3 through 8 and 11.

In addition, an online panel was open to educators, parents and other interested members of the community to provide unprecedented input on the achievement levels. More than 2,500 people participated in the online panel, including 89 Idahoans.

As an additional step, the consortium engaged an external auditor, an Achievement Level Setting Advisory Panel and its standing Technical Advisory Committee, to review the recommendations before they were presented to the states for approval. The auditor and both advisory panels certified that Smarter Balanced conducted a valid process that is consistent with best practice in the field.

In approving the Achievement Levels, Smarter Balanced member states relied primarily on the recommendations from the Achievement Level Setting process. Members also gave consideration to other sources of information about the general content readiness of high school students to engage in credit-bearing college-level work. This included a comprehensive body of research on college academic preparedness of high school students conducted by the National Assessment Governing Board (NAGB), the oversight body for the National Assessment of Educational Progress (NAEP).

The Smarter Balanced Assessment has four levels for achievement. A score of three is proficient. Since the consortium is offering assessments for both ELA and math for grades 3 through 8 and high school, the recommendations include achievement level scores for both subject areas and at each of those grade levels. The consortium estimates that based on all students who participated nationally in the assessment, the percentage of students who would have scored “Level 3 or higher” in math ranged from 32 percent in Grade 8 to 39 percent in Grade 3. In English language arts, the percentage of students who would have scored “Level 3 or higher” ranged from 38 percent in Grade 3 to 44 percent in Grade 5. No specific Idaho data is available.

While the consortium will provide test items and item development, American Institutes of Research (AIR) is the vendor that Idaho selected through a competitive request for proposal process to deliver and score the assessment and generate reports.

Nearly 3,500 Idaho educators are currently using the Smarter Balanced Digital Library to access lesson plans, view master teachers teaching lessons aligned to the Core Standards and Beginning in January, Idaho teachers will have access to interim assessments and the operational ISAT will begin in March 30<sup>th</sup>.

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At this time, achievement levels for grades 9 and 10 have not yet been determined. The consortium only created test blue prints for grades 3 through 8 and 11, the state of Idaho will need to develop its own test blue prints using assessment items. This work will be done by AIR in conjunction with Idaho educators. Grades 9 and 10 achievement levels will be determined in the spring of 2015 and presented for Board approval at that time.

**IMPACT**

If the Board does not approve the achievement levels then Idaho students and teachers will not know what the new ISAT scores mean and there will be no measure of student achievement. It would not be possible to determine school improvement status and we would not be in compliance with the Elementary-Secondary Education Act (ESEA).

**ATTACHMENTS**

Attachment 1 - Smarter Balanced Score Bands	Page 5
Attachment 2 - ALD - ELA, Grades 3-8 and 11	Page 7
Attachment 3 - ALD - Math, Grades 3-8 and 11	Page 37
Attachment 4 – Smarter Balanced Achievement Level Setting	Page 59
Attachment 5 – Idaho in-Person Panelists 10-24-2014	Page 85
Attachment 6 – In-Person Panel for Achievement Level Setting	Page 87
Attachment 7 – Smarter Balance Resource Links	Page 89

**BOARD ACTION**

I move to approve the Idaho academic achievement standards, including the Proficiency line descriptors and ISAT achievement levels, at each performance level for each grade, as submitted in attachments 1, 2 and 3.

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

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**Score Bands**

	Level 1		Level 2		Level 3		Level 4	
ELA	From	To	From	To	From	To	From	To
3	2000	2366	2367	2431	2432	2489	2490	2636
4	2198	2415	2416	2472	2473	2532	2533	2690
5	2239	2441	2442	2501	2502	2581	2582	2724
6	2259	2456	2457	2530	2531	2617	2618	2748
7	2268	2478	2479	2551	2552	2648	2649	2768
8	2292	2486	2487	2566	2567	2667	2668	2790
11	2290	2492	2493	2582	2583	2681	2682	3000
Math	From	To	From	To	From	To	From	To
3	2000	2380	2381	2435	2436	2500	2501	2613
4	2255	2410	2411	2484	2485	2548	2549	2663
5	2265	2454	2455	2527	2528	2578	2579	2710
6	2263	2472	2473	2551	2552	2609	2610	2752
7	2243	2483	2484	2566	2567	2634	2635	2789
8	2239	2503	2504	2585	2586	2652	2653	2819
11	2242	2542	2543	2627	2628	2717	2718	3000

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Threshold Achievement Level Descriptors  
Grade 3 English Language Arts/Literacy**

The student who just enters Level 2 should be able to:	
<b>READING Literary Text Targets 1–7</b>	<ul style="list-style-type: none"> <li>• Use some details and information from text to partially support answers or basic inferences.</li> <li>• In texts of low-to-moderate complexity, summarize central ideas, key events, or the sequence of events presented in a text.</li> <li>• In texts of low-to-moderate complexity, determine intended meaning of words through context, relationships, structure, or resources.</li> <li>• In texts of low-to-moderate complexity, explain his or her inferences about characters, feelings, and author's message.</li> <li>• Explain how information is presented or connected within or across texts of low-to-moderate complexity.</li> <li>• Specify or compare relationships across texts of low-to-moderate complexity.</li> <li>• Demonstrate knowledge of text structures or text features in texts of low-to-moderate complexity.</li> <li>• Interpret use of language by distinguishing literal from non-literal meanings of words or phrases used in context in texts of low-to-moderate complexity.</li> </ul>
<b>READING Informational Text Targets 8–14</b>	<ul style="list-style-type: none"> <li>• Use some details and information from text to partially support answers or basic inferences.</li> <li>• In texts of low-to-moderate complexity, summarize central ideas, key events, or the sequence of events presented in a text.</li> <li>• In texts of low-to-moderate complexity, determine intended meaning of words through context, relationships, structure, or resources.</li> <li>• In texts of low-to-moderate complexity, explain his or her inferences about characters, feelings, and author's message.</li> <li>• Explain how information is presented or connected within or across texts of low-to-moderate complexity.</li> <li>• Specify or compare relationships across texts of low-to-moderate complexity.</li> <li>• Demonstrate knowledge of text structures or text features in texts of low-to-moderate complexity.</li> <li>• Interpret use of language by distinguishing literal from non-literal meanings of words or phrases used in context in texts of low-to-moderate complexity.</li> </ul>
<b>WRITING Targets 1–10</b>	<ul style="list-style-type: none"> <li>• Write or revise one simple-structure paragraph, demonstrating some awareness of narrative techniques, chronology, appropriate transitional strategies for coherence, or author's craft appropriate to purpose.</li> <li>• Write simple complete compositions, demonstrating some narrative techniques: chronology, transitional strategies for coherence, structure, or author's craft with possible demonstration of purpose.</li> <li>• Write or revise one simple-structure informational/explanatory paragraph, demonstrating some awareness of how to organize ideas by stating focus, including transitional strategies for coherence, supporting details, or a conclusion.</li> <li>• Write or revise, simple informational/explanatory texts on a topic, occasionally attending to purpose and audience, organizing ideas by stating a focus, including structures and transitional strategies for coherence, including some supporting details and a conclusion.</li> <li>• Show some awareness of how to use text features in information texts to enhance meaning with minimal support (e.g., directive or general feedback).</li> <li>• Write or revise one simple-structure paragraph demonstrating ability to state an opinion about a topic or source, set a context, loosely organize ideas using linking words, develop some supporting reasons, or provide a partial conclusion.</li> </ul>



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Grade 3 English Language Arts/Literacy**

	<ul style="list-style-type: none"> <li>• Write simple complete opinion pieces, demonstrating some ability to state opinions about topics or sources, attend to purpose and audience, organize ideas by stating a context and focus, include structures and transitional strategies for coherence, develop few supporting reasons, and provide a conclusion.</li> <li>• With some support (e.g., directive and general feedback), use language and vocabulary that is appropriate to the purpose and audience when revising or composing texts.</li> <li>• Apply or edit grade-appropriate grammar, usage, and mechanics to clarify a message and edit narrative, informational, and opinion texts.</li> <li>• Use tools of technology to produce texts with minimal support (e.g., whole broken into parts).</li> </ul>
<b>SPEAKING/ LISTENING Target 4</b>	<ul style="list-style-type: none"> <li>• Interpret or use information delivered orally or audio-visually with some support (e.g., repeated listening or viewing).</li> </ul>
<b>The student who just enters Level 3 should be able to:</b>	
<b>READING Literary Text Targets 1–7</b>	<ul style="list-style-type: none"> <li>• Use explicit details and information from texts of moderate complexity to support answers or basic inferences.</li> <li>• Identify or summarize central ideas, key events, or sequence of events presented in texts of moderate complexity.</li> <li>• Determine intended meaning of words through context, relationships, structure, or resources in texts of moderate complexity.</li> <li>• Interpret and explain inferences and author’s message and distinguish point of view in texts of moderate complexity.</li> <li>• Specify and compare or contrast relationships across texts of moderate complexity.</li> <li>• Demonstrate knowledge of text structures or text features to obtain, interpret, explain, or connect information in texts of moderate complexity.</li> <li>• Interpret use of language by distinguishing literal from non-literal meanings of words or phrases used in context in texts of moderate complexity.</li> </ul>
<b>READING Informational Text Targets 8–14</b>	<ul style="list-style-type: none"> <li>• Use explicit details and information from texts of moderate complexity to support answers or basic inferences.</li> <li>• Identify or summarize central ideas, key events, or sequence of events presented in texts of moderate complexity.</li> <li>• Determine intended meaning of words through context, relationships, structure, or resources in texts of moderate complexity.</li> <li>• Interpret and explain inferences and author’s message and distinguish point of view in texts of moderate complexity.</li> <li>• Specify and compare or contrast relationships across texts of moderate complexity.</li> <li>• Demonstrate knowledge of text structures or text features to obtain, interpret, explain, or connect information in texts of moderate complexity.</li> <li>• Interpret use of language by distinguishing literal from non-literal meanings of words or phrases used in context in texts of moderate complexity.</li> </ul>
<b>WRITING Targets 1–10</b>	<ul style="list-style-type: none"> <li>• Write or revise one paragraph, demonstrating narrative techniques, chronology, appropriate transitional strategies for coherence, or author’s craft appropriate to purpose.</li> <li>• Write full compositions, demonstrating narrative techniques: chronology, transitional strategies for coherence, or author’s craft with minimal demonstration of purpose.</li> </ul>

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	<ul style="list-style-type: none"> <li>• Write or revise one or more informational/explanatory paragraphs, demonstrating ability to organize ideas by stating focus, including transitional strategies for coherence, supporting details, or a conclusion.</li> <li>• Use text features in information texts to enhance meaning without support.</li> <li>• Write or revise one or more paragraphs, demonstrating ability to state an opinion about a topic or source, set a context, organize ideas using linking words, develop supporting reasons, or provide an appropriate conclusion.</li> <li>• Write full opinion pieces, demonstrating ability to state opinions about topics or sources, attend to purpose and audience, organize ideas by stating a context and focus, include structures and transitional strategies for coherence, develop supporting reasons, and provide a conclusion.</li> <li>• Without support, use grade-level vocabulary appropriate to the purpose and audience when revising and composing text.</li> <li>• Apply or edit grade-appropriate grammar, usage, and mechanics to clarify a message and edit narrative, informational, and opinion texts.</li> <li>• Without support, use tools of technology to produce texts.</li> </ul>
<b>SPEAKING/ LISTENING Target 4</b>	<ul style="list-style-type: none"> <li>• Interpret and use information delivered orally or audio-visually without support.</li> </ul>
<b>The student who just enters Level 4 should be able to:</b>	
<b>READING Literary Text Targets 1–7</b>	<ul style="list-style-type: none"> <li>• Use explicit details and information from the text to support answers and basic inferences in highly complex texts.</li> <li>• Identify and summarize central ideas, key events, or the sequence of events presented in highly complex texts.</li> <li>• Determine intended meaning of words through context, relationships, structure, or resources in highly complex texts.</li> <li>• Use evidence to interpret and explain inferences and distinguish point of view from that of the narrator/character in highly complex texts.</li> <li>• Specify, compare, and contrast relationships across highly complex texts.</li> <li>• Demonstrate knowledge of text structures and text features to interpret or explain/connect information in highly complex texts.</li> <li>• Begin to interpret use of language by distinguishing literal from non-literal meanings of words or phrases used in context in highly complex texts.</li> </ul>
<b>READING Informational Text Targets 8–14</b>	<ul style="list-style-type: none"> <li>• Use explicit details and information from the text to support answers and basic inferences in highly complex texts.</li> <li>• Identify and summarize central ideas, key events, or the sequence of events presented in highly complex texts.</li> <li>• Determine intended meaning of words through context, relationships, structure, or resources in highly complex texts.</li> <li>• Use evidence to interpret and explain inferences and distinguish point of view from that of the narrator/character in highly complex texts.</li> <li>• Specify, compare, and contrast relationships across highly complex texts.</li> <li>• Demonstrate knowledge of text structures and text features to interpret or explain/connect</li> </ul>

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	<p>information in highly complex texts.</p> <ul style="list-style-type: none"> <li>• Begin to interpret use of language by distinguishing literal from non-literal meanings of words or phrases used in context in highly complex texts.</li> <li>• Evaluate or interpret the impact/intent of literary devices or connotative meaning of words and phrases used in context and the impact of those word choices on reader interpretation of texts of high complexity.</li> </ul>
<b>WRITING</b> <b>Targets</b> <b>1–10</b>	<ul style="list-style-type: none"> <li>• Begin to write or revise one or more complex paragraphs, demonstrating specific narrative techniques, chronology, appropriate transitional strategies for coherence, and author's craft appropriate to purpose.</li> <li>• Begin to write full, complex compositions, demonstrating specific narrative techniques: chronology, appropriate transitional strategies for coherence, structure, and author's craft appropriate to purpose.</li> <li>• Begin to write or revise one or more complex informational/explanatory paragraphs, demonstrating ability to organize ideas by stating focus, including appropriate transitional strategies for coherence, supporting details, and an appropriate conclusion.</li> <li>• Begin to write or revise one or more complex paragraphs, demonstrating ability to state opinions about topics or sources, set a context, organize ideas using linking words or phrases, develop supporting reasons, or provide an appropriate, strong conclusion.</li> <li>• Begin to write complex opinion pieces, demonstrating ability to state opinions about topics or sources, attend to purpose and audience, organize ideas by stating a context and focus, include structures and appropriate transitional strategies for coherence, develop supporting reasons, and provide an appropriate conclusion.</li> <li>• Begin to use complex language and vocabulary appropriate to the purpose and audience when revising and composing texts.</li> <li>• Begin to apply or edit appropriately complex grammar, usage, and mechanics to clarify a message and edit narrative, informational, and opinion texts.</li> <li>• Begin to use multiple tools of technology to produce texts.</li> </ul>
<b>SPEAKING/ LISTENING</b> <b>Target 4</b>	<ul style="list-style-type: none"> <li>• Begin to critically interpret and use information delivered orally or audio-visually.</li> </ul>

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The student who just enters Level 2 should be able to:	
<b>READING</b> <b>Literary Text</b> <b>Targets</b> <b>1–7</b>	<ul style="list-style-type: none"> <li>• Use some details and information from the text to minimally support answers and inferences in texts of low-to-moderate complexity.</li> <li>• Identify or summarize some central ideas/key events in texts of low-to-moderate complexity.</li> <li>• Determine the intended meanings of some words, including words with multiple meanings, based on context, word relationships, word structure, and use of resources, with support in texts of low-to-moderate complexity.</li> <li>• Use supporting evidence to justify/explain own inferences in texts of low-to-moderate complexity.</li> <li>• Interpret, specify, or compare how information is presented across texts of low-to moderate complexity.</li> <li>• Relate partial knowledge of text structures, genre-specific features, or formats to obtain, interpret, explain, or connect information within texts of low-to-moderate complexity.</li> <li>• Determine some figurative language, literary devices, or connotative meanings of words and phrases used in context in texts of low-to-moderate complexity.</li> </ul>
<b>READING</b> <b>Informational Text</b> <b>Targets</b> <b>8–14</b>	<ul style="list-style-type: none"> <li>• Identify some details and information from the text to support answers or basic inferences about information presented in texts of low-to-moderate complexity.</li> <li>• Identify some central ideas, key events, and procedures with support.</li> <li>• Determine intended meanings of some words, academic words, domain-specific words, and words with multiple meanings, based on context, word relationships, word structure, or partial reliance on use of resources in texts of low-to-moderate complexity.</li> <li>• Provide some supporting evidence to justify or interpret how information is presented in texts of low-to-moderate complexity.</li> <li>• Interpret, explain, or connect information presented within or across texts of low-to-moderate complexity.</li> <li>• Relate knowledge of some text structures or text features to obtain, interpret, or explain information in texts of low-to-moderate complexity.</li> <li>• Determine some figurative language/literary devices or connotative meanings of words and phrases used in context and partially explain the impact of those word choices on meaning and tone in texts of low-to-moderate complexity.</li> </ul>
<b>WRITING</b> <b>Targets</b> <b>1–10</b>	<ul style="list-style-type: none"> <li>• Write or revise one simple-structure paragraph, demonstrating some awareness of narrative techniques, chronology, appropriate transitional strategies for coherence, or author’s craft.</li> <li>• Write simple complete compositions, occasionally demonstrating narrative techniques, appropriate transitional strategies for coherence, or author’s craft.</li> <li>• Write or revise one simple-structure informational/explanatory paragraph, demonstrating some awareness of how to organize ideas by stating a focus, include transitional strategies for coherence or supporting evidence and elaboration, or write body paragraphs with a conclusion.</li> <li>• Write simple informational/explanatory text on a topic, occasionally attending to purpose and audience; using minimal organization of ideas by stating a focus; including structures and transitional strategies for coherence; and including evidence, elaboration, and a conclusion.</li> <li>• With some support (e.g., directive and general feedback), show some awareness of how to use text features in informational texts to enhance meaning.</li> <li>• Write or revise one simple paragraph, demonstrating a limited ability to state opinions about topics or sources, including few organized ideas, loosely developed evidence/reasons and elaboration, and an undeveloped conclusion.</li> </ul>

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	<ul style="list-style-type: none"> <li>• Write simple opinion pieces demonstrating some ability to state opinions about a topic or source, minimally attending to purpose and audience; organize few ideas by stating a context and focus; include some structures and transitional strategies for coherence; include few supporting reasons/evidence; and include a conclusion.</li> <li>• With some support (e.g., directive or general feedback) show some awareness of how to use language and vocabulary appropriate to purpose and audience when revising or composing texts.</li> <li>• Apply or edit grade-appropriate grammar, usage, and mechanics to clarify a message and edit narrative, informational, and opinion texts with support (e.g., grammar aids).</li> <li>• Use tools of technology to gather information, make revisions, or produce texts with support (e.g., whole broken into parts).</li> </ul>
<b>SPEAKING/ LISTENING Target 4</b>	<ul style="list-style-type: none"> <li>• Interpret and use information delivered orally or audio-visually with support (e.g., some directive feedback).</li> </ul>
<b>RESEARCH/ INQUIRY Targets 1–4</b>	<ul style="list-style-type: none"> <li>• Conduct short simple research projects to answer single-step questions or to investigate and paraphrase different aspects of a narrow topic or concept.</li> <li>• Locate some information to support ideas and select some information from data or print and non-print text sources.</li> <li>• Distinguish relevant-irrelevant information with support (e.g., some directive feedback).</li> <li>• Generate some conjectures or opinions.</li> </ul>
<b>The student who just enters Level 3 should be able to:</b>	
<b>READING Literary Text Targets 1–7</b>	<ul style="list-style-type: none"> <li>• Use details and information from texts of moderate complexity to support answers and inferences.</li> <li>• Identify or summarize central ideas/key events in texts of moderate complexity.</li> <li>• Begin to determine the intended meanings of words, including words with multiple meanings, based on context, word relationships, word structure, and use of resources in texts of moderate complexity.</li> <li>• Use supporting evidence to justify/explain own inferences in texts of moderate complexity.</li> <li>• Interpret, specify, or compare how information is presented across texts of moderate complexity.</li> <li>• Begin to relate knowledge of text structures, genre-specific features, or formats to obtain, interpret, explain, or connect information within texts of moderate complexity.</li> <li>• Determine or interpret figurative language, literary devices, or connotative meanings of words and phrases used in context and partially explain the impact of those word choices on meaning and tone in texts of moderate complexity.</li> </ul>
<b>READING Informational Text Targets 8–14</b>	<ul style="list-style-type: none"> <li>• Identify details and information from texts of moderate complexity to support answers or basic inferences about information presented and provided.</li> <li>• Identify or summarize central ideas, key events, and procedures in texts of moderate complexity.</li> <li>• Determine intended meanings of words, academic words, domain-specific words, and words with multiple meanings, based on context, word relationships, word structure, or use of resources, with primary focus on the academic vocabulary common to texts of moderate complexity.</li> </ul>

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	<ul style="list-style-type: none"> <li>• Use supporting evidence to justify or interpret how information is presented or integrated in texts of moderate complexity.</li> <li>• Interpret, explain, or connect information presented within or across texts of moderate complexity.</li> <li>• Relate knowledge of text structures or text features to obtain, interpret, explain, or integrate information in texts of moderate complexity.</li> <li>• Determine or interpret figurative language/literary devices or connotative meanings of words and phrases used in context and explain the impact of those word choices on meaning and tone in texts of moderate complexity.</li> </ul>
<b>WRITING Targets 1–10</b>	<ul style="list-style-type: none"> <li>• Write or revise one paragraph, demonstrating narrative techniques, chronology, appropriate transitional strategies for coherence, and begin to use author’s craft with appropriate purpose.</li> <li>• Write full compositions, demonstrating specific narrative techniques, appropriate transitional strategies for coherence, and begin to use author’s craft with limited purpose.</li> <li>• Write one full informational/explanatory paragraph, demonstrating ability to organize ideas by stating a focus, including transitional strategies for coherence or supporting evidence and elaboration, and begin to write body paragraphs appropriate to a purpose and audience.</li> <li>• Write informational/explanatory texts on a topic, attending to purpose and audience; organize ideas by stating a focus; include structures and transitional strategies for coherence; include supporting evidence and elaboration; and begin to develop a complete conclusion.</li> <li>• Use some text features in informational text to enhance meaning without support.</li> <li>• Write or revise one paragraph, demonstrating ability to state opinions about topics or sources, set loose context, minimally organize ideas, develop evidence/reasons and elaboration, and develop a conclusion with limited purpose and audience.</li> <li>• Write opinion pieces, demonstrating ability to state opinions about topics or sources, attending to purpose and audience; organize ideas by stating a context and focus; include structures and transitions for coherence; include some supporting evidence/reasons and elaboration; and develop an appropriate conclusion.</li> <li>• Strategically use language and vocabulary appropriate to purpose and audience when revising or composing texts without support.</li> <li>• Apply or edit grade-appropriate grammar, usage, and mechanics to clarify a message and edit narrative, informational, and opinion texts without support.</li> <li>• Use tools of technology to gather information, make revisions, or produce texts.</li> </ul>
<b>SPEAKING/ LISTENING Target 4</b>	<ul style="list-style-type: none"> <li>• Interpret and use information delivered orally or audio-visually without support.</li> </ul>
<b>RESEARCH/ INQUIRY Targets 1–4</b>	<ul style="list-style-type: none"> <li>• Conduct short, limited research projects to answer multi-step questions, or to investigate and paraphrase different aspects of a broader topic or concept.</li> <li>• Locate information to support central ideas and subtopics and select information and partially integrate information from data or print and non-print sources.</li> <li>• Distinguish relevant-irrelevant information without support.</li> <li>• Generate partial conjectures or opinions and include partial evidence to support them based on evidence collected.</li> </ul>

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The student who just enters Level 4 should be able to:	
<b>READING</b> <b>Literary Text</b> <b>Targets</b> <b>1–7</b>	<ul style="list-style-type: none"> <li>• Use explicit details and implicit information from the text to support answers and inferences in highly complex texts.</li> <li>• Begin to consistently identify and summarize central ideas/key events in highly complex texts.</li> <li>• Begin to determine the intended meanings of words, including words with multiple meanings, based on context, word relationships, word structure, and use of resources in highly complex texts.</li> <li>• Begin to use extensive supporting evidence to justify/explain own inferences in depth in highly complex texts.</li> <li>• Begin to use extensive detail to interpret, specify, or compare how information is presented across highly complex texts.</li> <li>• Relate knowledge of text structures, genre-specific features, or formats to obtain, interpret, explain, or connect information within highly complex texts.</li> <li>• Begin to determine and interpret figurative language, literary devices, or connotative meanings of words and phrases used in context and explain the impact of those word choices on meaning and tone in highly complex texts.</li> </ul>
<b>READING</b> <b>Informational Text</b> <b>Targets</b> <b>8–14</b>	<ul style="list-style-type: none"> <li>• Begin to identify and explain explicit details and implicit information from highly complex texts to support answers and inferences about information presented and provided.</li> <li>• Identify and summarize central ideas, key details, and procedures in highly complex texts.</li> <li>• Begin to determine the intended meanings of words, academic words, domain-specific words, and words with multiple meanings, based on context, word relationships, word structure, or use of resources, with primary focus on the academic vocabulary common to highly complex texts.</li> <li>• Begin to use detailed supporting evidence to justify or interpret how information is presented and integrated in highly complex texts.</li> <li>• Begin to interpret, explain, or connect information presented within or across highly complex texts.</li> <li>• Begin to relate knowledge of text structures or text features to obtain, interpret, explain, and integrate information in highly complex texts.</li> <li>• Begin to determine or interpret figurative language/literary devices or connotative meanings of words and phrases used in context and the impact of those word choices on meaning and tone in highly complex texts.</li> </ul>
<b>WRITING</b> <b>Targets</b> <b>1–10</b>	<ul style="list-style-type: none"> <li>• Begin to write or revise one or more complex paragraphs, demonstrating specific narrative techniques, chronology, appropriate transitional strategies for coherence, or author's craft appropriate to purpose.</li> <li>• Begin to write full complex compositions, demonstrating, specific narrative techniques, appropriate transitional strategies for coherence, and author's craft appropriate to purpose.</li> <li>• Begin to write or revise more than one complex informational/explanatory paragraph, demonstrating ability to including appropriate transitional strategies for coherence or supporting evidence and elaboration, and writing body paragraphs with a conclusion appropriate to purpose and audience.</li> <li>• Begin to write full, complex informational/explanatory texts on a topic, attending to purpose and audience; organize ideas by stating a focus; include structures and appropriate transitional strategies for coherence; and include strong supporting details and a well-developed, appropriate conclusion.</li> <li>• Begin to use text features in information texts to enhance meaning.</li> </ul>

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	<ul style="list-style-type: none"> <li>• Begin to write or revise more than one complex paragraph, demonstrating ability to state opinions about topics or sources, set a context, efficiently organize ideas, develop strong supporting evidence/reasons and elaboration, and develop an appropriate, strong conclusion.</li> <li>• Begin to write complex opinion pieces, clearly demonstrating ability to state opinions about topics or sources, attending to purpose and audience; efficiently organize ideas by stating a context and focus; include more complex structures and appropriate transitional strategies for coherence; develop strong supporting evidence/reasons; and provide an appropriate, well-developed conclusion.</li> <li>• Begin to strategically use language and vocabulary appropriate to purpose and audience when revising or composing complex texts.</li> <li>• Begin to apply or edit appropriate grammar, usage, and mechanics to clarify a message and edit narrative, informational, and opinion texts.</li> <li>• Begin to use multiple tools of technology to gather information, make revisions, or produce texts.</li> </ul>
<b>SPEAKING/ LISTENING Target 4</b>	<ul style="list-style-type: none"> <li>• Begin to critically interpret and use information delivered orally or audio-visually.</li> </ul>
<b>RESEARCH/ INQUIRY Targets 1–4</b>	<ul style="list-style-type: none"> <li>• Begin to conduct research projects to answer multi-step questions or to investigate and paraphrase different aspects of a broader topic or concept.</li> <li>• Begin to locate information to support central ideas and subtopics and select and integrate critical information from two or more data or print and non-print text sources.</li> <li>• Begin to distinguish relevant-irrelevant information.</li> <li>• Begin to generate strong conjectures or opinions and cite relevant evidence to support them based on evidence collected and analyzed.</li> </ul>



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The student who just enters Level 2 should be able to:	
<b>READING Literary Text Targets 1–7</b>	<ul style="list-style-type: none"> <li>• Cite some textual evidence to support conclusions drawn from texts of low-to-moderate complexity.</li> <li>• Use some explicit and limited implicit information to support emerging inferences or analyses.</li> <li>• Partially summarize central ideas and some key events.</li> <li>• Determine the intended meaning of some grade-appropriate words, including academic and domain-specific words within context.</li> <li>• Use some supporting evidence to justify interpretations of information presented or indicate how information is integrated in one or more texts.</li> <li>• Identify and begin to compare how information is presented within or across texts of low-to-moderate complexity.</li> <li>• Use basic knowledge of text structures or genre-specific features to begin to integrate or analyze information.</li> <li>• Interpret the meaning of some common figurative language.</li> </ul>
<b>READING Informational Text Targets 8–14</b>	<ul style="list-style-type: none"> <li>• Cite some textual evidence to support conclusions drawn from texts of low-to-moderate complexity.</li> <li>• Use some explicit and limited implicit information to support emerging inferences or analyses.</li> <li>• Partially summarize central ideas and some key events.</li> <li>• Determine the intended meaning of some grade-appropriate words, including academic and domain-specific words within context.</li> <li>• Use some supporting evidence to justify interpretations of information presented or indicate how information is integrated in texts of low-to-moderate complexity.</li> <li>• Identify and begin to compare how information is presented within or across texts of low-to-moderate complexity.</li> <li>• Use basic knowledge of text structures or genre-specific features to begin to integrate or analyze information.</li> <li>• Interpret the meaning of some common figurative language.</li> </ul>
<b>WRITING Targets 1–10</b>	<ul style="list-style-type: none"> <li>• Write or revise one paragraph, demonstrating some narrative techniques, chronology, appropriate transitional strategies for coherence, or author's craft.</li> <li>• Plan, write, revise, and edit a full composition, occasionally demonstrating narrative techniques, chronology, transitional strategies for coherence, or author's craft.</li> <li>• Write or revise one informational/explanatory paragraph, demonstrating some ability to organize ideas by stating a focus, including some transitional strategies for coherence or some supporting evidence and elaboration, or writing body paragraphs or a conclusion.</li> <li>• Plan, write, revise, and edit full informational/explanatory text on a topic, attending to purpose and audience, organizing ideas by stating a focus, including structures and transitional strategies for coherence, including supporting evidence and elaboration, and developing a conclusion.</li> <li>• Use some appropriate text features (headings, bold text, captions, etc.) in informational texts to enhance meaning.</li> <li>• Write or revise one paragraph, demonstrating some ability to state opinions about topics or sources, set a loose context, minimally organize ideas using linking words or phrases, develop evidence/reasons and some elaboration, or develop a conclusion.</li> </ul>

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	<ul style="list-style-type: none"> <li>• Plan, write, revise, and edit opinion pieces, demonstrating some ability to state opinions about topics or sources, minimally attending to purpose and audience; organize ideas by stating a context and focus; include structures and some transitional strategies for coherence; develop some evidence/reasons and elaboration; and develop a conclusion.</li> <li>• With minimal support, use some common language and vocabulary (including academic or domain-specific vocabulary) appropriate to the purpose and audience when revising or composing texts.</li> <li>• Show some ability to apply and edit text, demonstrating a partial understanding of Standard English grammar conventions and usage (e.g., capitalization, punctuation, and spelling).</li> <li>• Begin to use the tools of technology (including the Internet), with substantial guidance and support, to produce and publish writing.</li> </ul>
<b>SPEAKING/ LISTENING Target 4</b>	<ul style="list-style-type: none"> <li>• Interpret and use information delivered orally or audio-visually with support (e.g., some directive feedback).</li> </ul>
<b>RESEARCH/ INQUIRY Targets 1–4</b>	<ul style="list-style-type: none"> <li>• Begin to conduct simple, short research projects with some guidance.</li> <li>• With some guidance, begin to locate information to support central ideas and subtopics; select and integrate information from multiple sources.</li> <li>• With some guidance, begin to gather and distinguish relevant information, summarize/paraphrase information from multiple sources, and provide a list of sources.</li> <li>• With some guidance, begin to integrate information from several sources on the same topic to generate an informed opinion in order to write about the subject knowledgeably.</li> </ul>
<b>The student who just enters Level 3 should be able to:</b>	
<b>READING Literary Text Targets 1–7</b>	<ul style="list-style-type: none"> <li>• With some consistency, identify some relevant textual evidence to support conclusions drawn from texts of moderate complexity.</li> <li>• Identify and interpret the meaning of some figurative language, some literary devices, and some connotative meanings of words and phrases.</li> <li>• Accurately summarize central ideas and key events.</li> <li>• With some consistency, determine the intended or precise meaning of grade-appropriate words, including academic and domain-specific words.</li> <li>• Apply some relevant reasoning and textual evidence to justify developing analyses or judgments.</li> <li>• With some consistency, analyze how information is presented within or across texts of moderate complexity, identifying some relationships among targeted aspects.</li> <li>• With some consistency, analyze some text structures and genre-specific features or formats from multiple texts, and identify the impact of those choices on meaning or presentation.</li> </ul>
<b>READING Informational Text Targets 8–14</b>	<ul style="list-style-type: none"> <li>• With some consistency, identify some relevant textual evidence to support conclusions drawn from texts of moderate complexity.</li> <li>• Identify and interpret the meaning of some figurative language and some literary devices or connotative meanings of words and phrases.</li> <li>• Accurately summarize central ideas and key events.</li> <li>• With some consistency, determine the intended or precise meaning of grade-appropriate words, including academic and domain-specific words.</li> <li>• Apply some relevant reasoning and textual evidence to justify developing analyses or</li> </ul>

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	<p>judgments.</p> <ul style="list-style-type: none"> <li>• With some consistency, analyze how information is presented within or across texts of moderate complexity, identifying some relationships among targeted aspects.</li> <li>• With some consistency, analyze some text structures, genre-specific features, or formats from multiple texts of moderate complexity.</li> </ul>
<b>WRITING Targets 1–10</b>	<ul style="list-style-type: none"> <li>• Write or revise one or more paragraphs, demonstrating narrative techniques, chronology, appropriate transitional strategies for coherence, or author’s craft appropriate to purpose, including a conclusion.</li> <li>• Plan, write, revise, and edit a full composition, demonstrating narrative techniques, chronology, appropriate transitional strategies for coherence, author’s craft appropriate to purpose, including a conclusion, and evidence from texts to support analysis, reflection, and research.</li> <li>• Write or revise one or more informational/explanatory paragraphs, demonstrating ability to organize ideas by stating a focus, including transitional strategies for coherence, or supporting evidence and elaboration, or writing body paragraphs or a conclusion appropriate to purpose and audience.</li> <li>• Plan, write, revise, and edit full informational/explanatory text on a topic, attending to purpose and audience; organize ideas by stating a focus, include structures and transitional strategies for coherence, include supporting evidence and elaboration, and develop a conclusion.</li> <li>• Use appropriate text features (headings, bold text, captions, etc.) in informational texts to enhance meaning.</li> <li>• Write or revise one or more paragraphs, demonstrating ability to state opinions about topics or sources, set a context, organize ideas using linking words or phrases, develop supporting evidence/reasons and elaboration, or develop a conclusion appropriate to purpose and audience.</li> <li>• Plan, write, revise and edit full opinion pieces, demonstrating ability to state opinions about topics or sources, attend to purpose and audience, organize ideas by stating a context and focus, include structures and transitional strategies for coherence, develop supporting evidence/reasons, and develop a conclusion appropriate to purpose and audience.</li> <li>• Use a range of language and vocabulary (including academic or domain-specific vocabulary) appropriate to the purpose and audience when revising or composing texts.</li> <li>• Adequately apply and edit text, demonstrating a understanding of Standard English grammar conventions and usage (e.g., capitalization, punctuation, and spelling).</li> <li>• Use the tools of technology (including the Internet) to produce and publish writing.</li> </ul>
<b>SPEAKING/ LISTENING Target 4</b>	<ul style="list-style-type: none"> <li>• Interpret and use information delivered orally or audio-visually.</li> </ul>
<b>RESEARCH/ INQUIRY Targets 1–4</b>	<ul style="list-style-type: none"> <li>• Conduct short research projects.</li> <li>• Locate information to support central ideas and subtopics; select and integrate information from multiple sources.</li> <li>• Gather and distinguish relevant information, summarize/paraphrase information from multiple sources, and provide a list of sources.</li> <li>• Integrate information from several sources on the same topic to generate an informed opinion and write about the subject knowledgeably.</li> </ul>

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The student who just enters Level 4 should be able to:	
<b>READING</b> <b>Literary Text</b> <b>Targets</b> <b>1–7</b>	<ul style="list-style-type: none"> <li>• Consistently cite specific and relevant textual evidence to support conclusions drawn from highly complex texts.</li> <li>• Accurately interpret the meaning and impact of most figurative language and literary devices or cognitive meanings of words and phrases.</li> <li>• Consistently and accurately summarize central ideas and key events.</li> <li>• Determine the intended and precise meaning of most grade-appropriate words, including academic and domain-specific words.</li> <li>• Apply appropriate and relevant reasoning and a range of textual evidence to justify analysis or judgments.</li> <li>• Analyze and/or compare how information is presented within or across highly complex texts, identifying relationships among targeted aspects.</li> <li>• Consistently evaluate text structures and genre-specific features across texts, and identify the impact of those choices on meaning or presentation.</li> </ul>
<b>READING</b> <b>Informational Text</b> <b>Targets</b> <b>8–14</b>	<ul style="list-style-type: none"> <li>• Consistently cite specific, relevant textual evidence to support conclusions drawn from highly complex texts.</li> <li>• Accurately interpret the meaning and impact of most figurative language and literary devices or connotative meanings of words and phrases.</li> <li>• Consistently and accurately summarize central ideas and key events.</li> <li>• Determine the intended and precise meaning of most grade-appropriate words, including academic and domain-specific words.</li> <li>• Apply appropriate and relevant reasoning and a range of textual evidence to justify analysis or judgments.</li> <li>• Analyze and/or compare how information is presented within or across highly complex texts, identifying relationships among targeted aspects.</li> <li>• Consistently evaluate text structures across highly complex texts.</li> </ul>
<b>WRITING</b> <b>Targets</b> <b>1–10</b>	<ul style="list-style-type: none"> <li>• Write or revise more than one complex paragraphs, demonstrating specific narrative techniques, chronology, appropriate transitional strategies for coherence, or author’s craft appropriate to purpose, including a strong conclusion.</li> <li>• Plan, write, revise, and edit a full, complex composition, clearly demonstrating specific narrative techniques, chronology, appropriate transitional strategies for coherence, and author’s craft appropriate to purpose, including a well-developed conclusion and evidence from texts to support analysis, reflection, and research.</li> <li>• Write or revise more than one complex informational/explanatory paragraph, demonstrating ability to organize ideas by stating a focus, including appropriate transitional strategies for coherence, or strong supporting evidence and elaboration, or writing body paragraphs or a conclusion appropriate to purpose and audience.</li> <li>• Plan, write, revise, and edit full informational/explanatory text on a topic attending to purpose and audience, organizing ideas by stating a focus, including structures and appropriate transitional strategies for coherence, including strong supporting evidence and elaboration, and developing an appropriate conclusion.</li> <li>• Use effective text features (headings, bold text, captions, etc.) in informational texts to enhance meaning.</li> </ul>

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	<ul style="list-style-type: none"> <li>• Write or revise more than one paragraph, clearly demonstrating the ability to state opinions about topics or sources, set a context, efficiently organize ideas using linking words or phrases, develop supporting evidence/reasons and some elaboration, or develop a conclusion appropriate to purpose and audience.</li> <li>• Plan, write, revise and edit full opinion pieces, demonstrating the ability to state opinions about topics or sources, attend to purpose and audience, efficiently organize ideas by stating a context and focus, include some complex structures and appropriate transitional strategies for coherence, develop strong supporting evidence/reasons and elaboration, and develop an appropriate conclusion.</li> <li>• Use a broad range of language and vocabulary (including academic or domain-specific vocabulary) appropriate to the purpose and audience when revising or composing texts.</li> <li>• Effectively apply and edit text, demonstrating an understanding of Standard English grammar conventions and usage (e.g., capitalization, punctuation, and spelling).</li> <li>• Effectively use the tools of technology (including the Internet) to produce and publish writing.</li> </ul>
<b>SPEAKING/ LISTENING Target 4</b>	<ul style="list-style-type: none"> <li>• Begin to critically interpret and use information delivered orally or audio-visually.</li> </ul>
<b>RESEARCH/ INQUIRY Targets 1–4</b>	<ul style="list-style-type: none"> <li>• Begin to critically and effectively conduct short research projects with some guidance.</li> <li>• Begin to critically and effectively locate information to support central ideas and subtopics; select and integrate information from multiple sources.</li> <li>• Begin to critically and effectively gather and distinguish relevant information, summarize/paraphrase information from multiple sources, and provide a list of sources.</li> <li>• Begin to critically and effectively integrate information from several sources on the same topic to generate an informed opinion and write about the subject knowledgeably.</li> </ul>

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The student who just enters Level 2 should be able to:	
<b>READING</b> <b>Literary Text</b> <b>Targets</b> <b>1–7</b>	<ul style="list-style-type: none"> <li>• Cite some textual evidence to support conclusions drawn from text.</li> <li>• Use some explicit and limited implicit information to support emerging inferences or analyses.</li> <li>• Partially summarize central ideas and key events using some details from texts of low-to-moderate complexity.</li> <li>• Determine the intended meaning of some grade-appropriate words including academic and domain-specific words within context.</li> <li>• Use some supporting evidence to justify interpretations of information presented or how information is integrated in one or more texts.</li> <li>• Identify and begin to compare how information is presented within or across texts.</li> <li>• Relate basic knowledge of text structures or genre-specific features to begin to integrate or analyze information.</li> <li>• Interpret the intent of some common figurative language.</li> </ul>
<b>READING</b> <b>Informational Text</b> <b>Targets</b> <b>8–14</b>	<ul style="list-style-type: none"> <li>• Cite some textual evidence to support conclusions drawn from text.</li> <li>• Begin to use explicit and limited implicit information to support emerging inferences or analyses.</li> <li>• Partially summarize central ideas and some key events.</li> <li>• Determine the intended meaning of grade-appropriate words including academic and domain-specific words within context.</li> <li>• Use some supporting evidence to justify interpretations of information presented or how information is integrated in one or more text.</li> <li>• Identify and begin to compare how information is presented within or across texts.</li> <li>• Use basic knowledge of text structures or genre-specific features to begin to integrate or analyze information.</li> <li>• Partially interpret intent of some common figurative language.</li> </ul>
<b>WRITING</b> <b>Targets</b> <b>1–10</b>	<ul style="list-style-type: none"> <li>• Apply some narrative strategies, textual structures, and transitional strategies for coherence.</li> <li>• Use minimal relevant details when writing or revising brief narrative texts.</li> <li>• Use minimal support and elaboration when writing brief informational/explanatory texts.</li> <li>• Demonstrate some ability to use appropriate text features.</li> <li>• Produce argumentative texts and attempt to acknowledge a counterclaim.</li> <li>• Demonstrate some awareness of audience and purpose when writing.</li> <li>• Pay limited attention to word choice and/or syntax.</li> <li>• Plan, write, revise, and edit argument texts demonstrating partial ability to state claims about topics or sources.</li> <li>• With some support, use basic language appropriate to the purpose and audience when revising or composing text.</li> <li>• Apply or edit a piece of writing, demonstrating a partial understanding of Standard English grammar conventions and usage (e.g., capitalization, punctuation, and spelling) when writing.</li> <li>• Demonstrate limited use of technology, including the Internet, to produce and publish writing.</li> </ul>

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<b>SPEAKING/ LISTENING Target 4</b>	<ul style="list-style-type: none"> <li>• Have limited engagement and interaction with media and source materials and minimally account for elements that contribute to points of view.</li> </ul>
<b>RESEARCH/ INQUIRY Targets 1–4</b>	<ul style="list-style-type: none"> <li>• Demonstrate minimal research and evaluation skills.</li> <li>• Draw broad conclusions from source materials.</li> <li>• Construct a partial claim with limited use of evidence.</li> <li>• Attempt to summarize main ideas, topics, key events, or procedures in informational texts but use limited supporting or relevant ideas or evidence.</li> <li>• Develop an argument with a claim and minimal support.</li> </ul>
<b>The student who just enters Level 3 should be able to:</b>	
<b>READING Literary Text Targets 1–7</b>	<ul style="list-style-type: none"> <li>• With some consistency, identify relevant textual evidence to support conclusions drawn from texts of moderate complexity.</li> <li>• Identify and interpret some figurative language and some literary devices or connotative meanings of words and phrases.</li> <li>• Accurately summarize central ideas and key events.</li> <li>• With some consistency, determine the intended or precise meaning of grade-appropriate words including academic and domain-specific words.</li> <li>• Apply some relevant reasoning and textual evidence to justify developing analyses or judgments made about intended effects.</li> <li>• With some consistency, analyze how information is presented within or across texts of moderate complexity, identifying some relationships among targeted aspects, including analysis of authors' points of view.</li> <li>• With some consistency, analyze some text structures or genre-specific features or formats from multiple sources of text and identify the impact of those choices on meaning or presentation.</li> </ul>
<b>READING Informational Text Targets 8–14</b>	<ul style="list-style-type: none"> <li>• With some consistency, identify relevant textual evidence to support conclusions drawn from text.</li> <li>• Identify and interpret some figurative language and some literary devices or connotative meanings of words and phrases.</li> <li>• Accurately summarize central ideas and key events.</li> <li>• Determine the intended or precise meaning of grade-appropriate words including academic and domain-specific words.</li> <li>• Apply some relevant reasoning and textual evidence to justify analyses or judgments made about intended effects.</li> <li>• Analyze how information is presented within or across texts, identifying some relationships among targeted aspects.</li> <li>• Analyze some text structures, genre-specific features or formats from multiple sources of text and the impact of those choices on meaning or presentation.</li> </ul>
<b>WRITING Targets 1–10</b>	<ul style="list-style-type: none"> <li>• Apply some narrative strategies when writing or revising one or more paragraphs.</li> <li>• Write longer narrative texts demonstrating use of specific narrative techniques, chronology, and appropriate transitional strategies for coherence.</li> <li>• Employ effective text features and visual components appropriate to purpose.</li> <li>• Demonstrate some ability to plan, write, revise, and edit full argument pieces, demonstrating ability to state claims about topics or sources; attend to purpose and</li> </ul>

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	<p>audience; organize ideas by stating a context and focus; include structures and appropriate transitional strategies for coherence; identify supporting evidence/reasons and elaboration from credible sources; and develop an appropriate conclusion.</p> <ul style="list-style-type: none"> <li>• Use a range of precise language and vocabulary (including academic words, domain-specific vocabulary, and figurative language) and style appropriate to the purpose and audience when revising or composing text.</li> <li>• Demonstrate some ability to edit a piece of writing, showing a strong adequate understanding of Standard English grammar conventions and usage (e.g., capitalization, punctuation, and spelling) when writing.</li> <li>• Demonstrate some use of technology, including the Internet, to produce and publish writing.</li> </ul>
<b>SPEAKING/ LISTENING Target 4</b>	<ul style="list-style-type: none"> <li>• Engage and interact with media and source materials and account for elements that contribute to points of view.</li> </ul>
<b>RESEARCH/ INQUIRY Targets 1–4</b>	<ul style="list-style-type: none"> <li>• Use research/inquiry methods to explore a topic.</li> <li>• Select from and adequately analyze sources from a variety of perspectives and present findings.</li> <li>• Adequately analyze authoritative sources of evidence with some diversity of formats to support a presentation.</li> <li>• Search for relevant authoritative information and evaluate the uses and limitations of source material.</li> <li>• Generate a specific debatable claim or main idea and cite some relevant evidence.</li> </ul>
<b>The student who just enters Level 4 should be able to:</b>	
<b>READING Literary Text Targets 1–7</b>	<ul style="list-style-type: none"> <li>• Cite specific, relevant textual evidence to support conclusions drawn from text.</li> <li>• Interpret the intent and impact of most figurative language and literary devices or connotative meanings of words and phrases.</li> <li>• Summarize central ideas and key events in texts of high complexity.</li> <li>• Determine the intended and precise meaning of most grade-appropriate words including academic and domain-specific words.</li> <li>• Apply appropriate and relevant reasoning and a range of textual evidence to justify analyses or judgments made about intended effects.</li> <li>• Analyze or compare how information is presented within or across texts, identifying relationships among targeted aspects.</li> <li>• Evaluate text structures or genre-specific features or formats from multiple sources of text and identify the impact of those choices on meaning or presentation.</li> </ul>
<b>READING Informational Text Targets 8–14</b>	<ul style="list-style-type: none"> <li>• Cite specific, relevant textual evidence to support conclusions drawn from text.</li> <li>• Interpret the intent and impact of most figurative language and literary devices or cognitive meanings of words and phrases.</li> <li>• Summarize central ideas and key events in texts of high complexity.</li> <li>• Determine the intended and precise meaning of most grade-appropriate words including academic and domain-specific words.</li> <li>• Apply appropriate and relevant reasoning and a range of textual evidence to justify analysis or judgments made about intended effects.</li> <li>• Analyze or compare how information is presented within or across texts, identifying relationships among targeted aspects.</li> </ul>



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	<ul style="list-style-type: none"> <li>Evaluate text structures across texts.</li> </ul>
<b>WRITING Targets 1–10</b>	<ul style="list-style-type: none"> <li>Demonstrate effective use of multiple, specific narrative techniques, chronology, and appropriate transitional strategies for coherence.</li> <li>Demonstrate effective use of precise words and phrases and use relevant descriptive details and sensory language to convey experiences or author’s craft appropriate to purpose, including a conclusion that reflects on the narrated experience.</li> <li>Demonstrate use of multiple, specific narrative techniques, chronology, and appropriate transitional strategies for coherence when writing longer narrative texts.</li> <li>Demonstrate effective use of precise language and formal style to organize ideas by stating a focus when writing or revising more than one informational or explanatory paragraph.</li> <li>Employ advanced text features and visual components appropriate to purpose.</li> <li>Effectively use an extensive range of language and vocabulary (including academic words, domain-specific vocabulary, and figurative language) and style appropriate to the purpose and audience when revising or composing text.</li> <li>Effectively apply or edit a piece of writing, demonstrating a strong understanding of Standard English grammar conventions and usage (e.g., capitalization, punctuation, and spelling) when writing.</li> <li>Effectively use technology, including the Internet, to produce and publish writing.</li> </ul>
<b>SPEAKING/ LISTENING Target 4</b>	<ul style="list-style-type: none"> <li>Effectively engage and interact with media and source materials and account for elements that contribute to points of view.</li> </ul>
<b>RESEARCH/ INQUIRY Targets 1–4</b>	<ul style="list-style-type: none"> <li>Employ multimodal resources to advance a sustained exploration of a topic.</li> <li>Synthesize multiple sources of relevant, authoritative information and discriminate among them to support an analysis.</li> <li>Search for relevant information from diverse authoritative sources.</li> <li>Systematically evaluate the uses and limitations of sources.</li> <li>Generate an authoritative claim.</li> <li>Evaluate and cite substantial, relevant evidence.</li> </ul>

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The student who just enters Level 2 should be able to:	
<b>READING Literary Text Targets 1–7</b>	<ul style="list-style-type: none"> <li>• Use textual evidence to justify analysis regarding theme, story elements, dialogue, and point of view in texts of low-to-moderate complexity.</li> <li>• Partially summarize central ideas and key events using some details from texts of low-to-moderate complexity.</li> <li>• Partially analyze relationships among literary elements within or across texts of low-to-moderate complexity or differing versions of texts representing various genres and text types.</li> <li>• Partially analyze the structure within or between two or more texts and genre-specific features or formats of texts and the impact of those choices on meaning or presentation.</li> <li>• Partially determine or interpret the impact/intent of literary devices or connotative meaning of contextually used words and phrases and the impact of those word choices on reader interpretation of texts of low-to-moderate complexity.</li> </ul>
<b>READING Informational Text Targets 8–14</b>	<ul style="list-style-type: none"> <li>• Identify textual evidence from sources across disciplines to support conclusions, inferences, connections, and steps to processes.</li> <li>• Partially summarize central ideas, topics/subtopics, key events, or procedures using some supporting ideas and details.</li> <li>• Partially determine connotative and denotative meanings of academic- and domain-specific words/phrases and words with multiple meanings, based on context-word relationships, word structure, and differentiating vocabulary meanings, in texts of low-to-moderate complexity.</li> <li>• Partially apply reasoning and some textual evidence to justify inferences or interpret author's presentation of information; partially delineate and evaluate the argument assessing whether the reasoning is sound.</li> <li>• Partially analyze a case in which two or more texts provide conflicting information on the same topic and identify where the texts disagree on matters of fact or interpretation regarding the authors' points of view.</li> <li>• Partially relate knowledge of text structures and genre-specific features or formats of texts to compare/analyze the impact of those choices on meaning or presentation.</li> <li>• Partially determine or interpret the impact/intent of literary devices or connotative meaning of words and phrases used in context and the impact of those word choices on reader interpretation of texts of low-to-moderate complexity.</li> </ul>
<b>WRITING Targets 1–10</b>	<ul style="list-style-type: none"> <li>• Apply some narrative strategies, textual structures, and transitional strategies for coherence.</li> <li>• Use minimal relevant details when writing or revising brief narrative texts.</li> <li>• Use minimal support and elaboration when writing brief informational/explanatory texts.</li> <li>• Demonstrate some ability to use appropriate text features.</li> <li>• Produce argumentative texts and attempt to acknowledge a counterclaim.</li> <li>• Demonstrate some awareness of audience and purpose when writing.</li> <li>• Pay limited attention to word choice and/or syntax.</li> <li>• Plan, write, revise, and edit argument pieces demonstrating partial ability to state claims about topics or sources.</li> <li>• With some support, use basic language appropriate to the purpose and audience when revising or composing text.</li> <li>• Write or edit texts, demonstrating a partial understanding of Standard English grammar conventions and usage (e.g., capitalization, punctuation, and spelling).</li> <li>• Demonstrate limited use of technology, including the Internet, to produce and publish writing.</li> </ul>

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<b>SPEAKING/ LISTENING Target 4</b>	<ul style="list-style-type: none"> <li>• Have limited engagement and interaction with media and source materials and minimally account for elements that contribute to points of view.</li> </ul>
<b>RESEARCH/ INQUIRY Targets 1–4</b>	<ul style="list-style-type: none"> <li>• Demonstrate minimal research and evaluation skills.</li> <li>• Draw broad conclusions from source materials.</li> <li>• Construct a partial claim with limited use of evidence.</li> <li>• Attempt to summarize main ideas, topics, key events, or procedures in informational texts but use limited supporting or relevant ideas or evidence.</li> <li>• Develop an argument with a claim and minimal support.</li> </ul>
<b>The student who just enters Level 3 should be able to:</b>	
<b>READING Literary Text Targets 1–7</b>	<ul style="list-style-type: none"> <li>• Summarize central ideas/key events using relevant details from texts of moderate complexity to determine a theme and provide an objective summary specifically relating analysis to character, setting, and plot.</li> <li>• Determine precise meaning of words and distinguish connotative and figurative meanings of academic- and domain-specific words/phrases.</li> <li>• Use a range of relevant textual evidence to justify analysis regarding theme, story elements, dialogue, and point of view (e.g., suspense, humor, dramatic irony) in texts of moderate complexity.</li> <li>• Analyze relationships among literary elements by comparing and contrasting them within or across texts of moderate complexity or differing versions of texts representing various genres and text types.</li> <li>• Analyze the structures of two or more texts and genre-specific features or formats of texts and the impact of those choices on meaning or presentation.</li> <li>• Determine or interpret the impact/intent of literary devices or connotative meaning of contextually used words and phrases and the impact of those word choices on reader interpretation of texts of moderate complexity.</li> </ul>
<b>READING Informational Text Targets 8–14</b>	<ul style="list-style-type: none"> <li>• Identify several pieces of relevant textual evidence from sources across disciplines to support conclusions, inferences, connections, and steps to processes.</li> <li>• Summarize central ideas, topics/subtopics, key events, or procedures using relevant supporting ideas and details.</li> <li>• Determine connotative and denotative meanings of academic- and domain-specific words/phrases and words with multiple meanings, based on context-word relationships, word structure, and differentiating vocabulary meanings, in texts of moderate complexity.</li> <li>• Apply reasoning and a range of textual evidence to justify inferences or interpret author's presentation of information.</li> <li>• Analyze a case in which two or more texts provide conflicting information on the same topic and identify where the texts disagree on matters of fact or interpretation regarding the authors' points of view.</li> <li>• Relate knowledge of text structures and genre-specific features or formats of texts to compare/analyze the impact of those choices on meaning or presentation.</li> <li>• Determine or interpret the impact/intent of literary devices or connotative meaning of words and phrases used in context and the impact of those word choices on reader interpretation of texts of moderate complexity.</li> </ul>

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<b>WRITING</b> <b>Targets</b> <b>1–10</b>	<ul style="list-style-type: none"> <li>• Apply some narrative strategies when writing or revising one or more paragraphs.</li> <li>• Write longer narrative texts demonstrating use of specific narrative techniques, chronology, and appropriate transitional strategies for coherence.</li> <li>• Employ effective text features and visual components appropriate to purpose.</li> <li>• Demonstrate some ability to plan, write, revise, and edit full argument pieces demonstrating ability to state claims about topics or sources; attend to purpose and audience; organize ideas by stating a context and focus; include structures and appropriate transitional strategies for coherence; identify supporting evidence/reasons and elaboration from credible sources; develop an appropriate conclusion.</li> <li>• Use a range of precise language and vocabulary (including academic words, domain-specific vocabulary, and figurative language) and style appropriate to the purpose and audience when revising or composing text.</li> <li>• Demonstrate some ability to edit a piece of writing, showing an understanding of Standard English grammar conventions and usage (e.g., capitalization, punctuation, and spelling) when writing.</li> <li>• Demonstrate some use of technology, including the Internet, to produce and publish writing.</li> </ul>
<b>SPEAKING/ LISTENING</b> <b>Target 4</b>	<ul style="list-style-type: none"> <li>• Engage and interact with media and source materials and account for elements that contribute to points of view.</li> </ul>
<b>RESEARCH/ INQUIRY</b> <b>Targets</b> <b>1–4</b>	<ul style="list-style-type: none"> <li>• Use research/inquiry methods to explore a topic.</li> <li>• Select from and adequately analyze sources from a variety of perspectives and present findings.</li> <li>• Adequately analyze authoritative sources of evidence with some diversity of formats to support a presentation.</li> <li>• Search for relevant authoritative information and evaluate the uses and limitations of source material.</li> <li>• Generate a specific debatable claim or main idea and cite some relevant evidence.</li> </ul>
<b>The student who just enters Level 4 should be able to:</b>	
<b>READING</b> <b>Literary Text</b> <b>Targets</b> <b>1–7</b>	<ul style="list-style-type: none"> <li>• Evaluate precise meaning of words and distinguish connotative and figurative meanings of academic- and domain-specific words/phrases.</li> <li>• Evaluate meaning of words with multiple meanings based on context-word relationships and word structures; thoroughly differentiate vocabulary meanings in texts of high complexity.</li> <li>• Summarize central ideas and key events using the most significant details from longer portions of texts of high complexity.</li> <li>• Cite strong and varied textual evidence to justify analysis regarding theme, story elements, dialogue, and point of view (e.g., suspense, humor, dramatic irony) in texts of high complexity.</li> <li>• Analyze relationships by comparing and contrasting them among literary elements within or across texts of high complexity.</li> <li>• Evaluate the structures of two or more texts and genre-specific features or formats of texts and the impact of those choices on meaning or presentation.</li> <li>• Evaluate and interpret the impact and intent of literary devices or connotative meaning of contextually used words and phrases and the impact of those word choices on reader interpretation of texts of high complexity.</li> </ul>

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<b>READING Informational Text Targets 8–14</b>	<ul style="list-style-type: none"> <li>• Identify several pieces of strong and varied textual evidence from sources across disciplines to support conclusions, inferences, connections, and steps to processes.</li> <li>• Summarize central ideas, topics/subtopics, key events, or procedures using strong supporting ideas and details with texts of high complexity.</li> <li>• Determine connotative and denotative meanings of academic- and domain-specific words/phrases and words with multiple meanings, based on context-word relationships, word structure, and differentiating vocabulary meanings, in texts of texts of high complexity.</li> <li>• Effectively apply reasoning and a range of textual evidence to justify inferences or interpret author's presentation of information.</li> <li>• Delineate and evaluate the argument assessing whether the reasoning is sound.</li> <li>• Effectively analyze a case in which two or more texts provide conflicting information on the same topic and identify where the texts disagree on matters of fact or interpretation regarding the authors' points of view.</li> <li>• Relate knowledge of text structures and genre-specific features or formats of texts of high complexity to compare/analyze the impact of those choices on meaning or presentation.</li> <li>• Evaluate or interpret the impact/intent of literary devices or connotative meaning of words and phrases used in context and the impact of those word choices on reader interpretation of texts of high complexity.</li> </ul>
<b>WRITING Targets 1–10</b>	<ul style="list-style-type: none"> <li>• Demonstrate effective use of multiple, specific narrative techniques, chronology, and appropriate transitional strategies for coherence.</li> <li>• Demonstrate effective use of precise words and phrases and use relevant descriptive details and sensory language to convey experiences or authors' craft appropriate to purpose, including a conclusion that reflects on the narrated experience.</li> <li>• Demonstrate use of multiple, specific narrative techniques, chronology, and appropriate transitional strategies for coherence when writing longer narrative texts.</li> <li>• Demonstrate effective use of precise language and formal style to organize ideas by stating a focus when writing or revising more than one informational or explanatory paragraph.</li> <li>• Employ advanced text features and visual components appropriate to purpose.</li> <li>• Effectively use an extensive range of language and vocabulary (including academic words, domain-specific vocabulary, and figurative language) and style appropriate to the purpose and audience when revising or composing text.</li> <li>• Effectively write or edit texts, demonstrating a strong understanding of Standard English grammar conventions and usage (e.g., capitalization, punctuation, and spelling).</li> <li>• Effectively use technology, including the Internet, to produce and publish writing.</li> </ul>
<b>SPEAKING/ LISTENING Target 4</b>	<ul style="list-style-type: none"> <li>• Effectively engage and interact with media and source materials and account for elements that contribute to points of view.</li> </ul>
<b>RESEARCH/ INQUIRY Targets 1–4</b>	<ul style="list-style-type: none"> <li>• Employ multimodal resources to advance a sustained exploration of a topic.</li> <li>• Synthesize multiple sources of relevant, authoritative information and discriminate among them to support an analysis.</li> <li>• Search for relevant information from diverse authoritative sources.</li> <li>• Systematically evaluate sources' uses and limitations.</li> <li>• Generate an authoritative claim.</li> <li>• Evaluate and cite substantial, relevant evidence.</li> </ul>

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The student who just enters Level 2 should be able to:	
<b>READING</b> <b>Literary Text</b> <b>Targets</b> <b>1–7</b>	<ul style="list-style-type: none"> <li>• Cite textual evidence to justify analysis regarding theme, story elements, dialogue, and point of view in texts of low-to-moderate complexity.</li> <li>• Partially summarize central ideas and key events using some details from texts of low-to-moderate complexity.</li> <li>• Partially analyze relationships within or between literary elements within or across texts of low-to-moderate complexity or in differing versions of texts representing various genres and text types.</li> <li>• Partially analyze the structure of two or more texts and genre-specific features or formats of texts of low-to-moderate complexity and the impact of those choices on meaning or presentation.</li> <li>• Partially determine or interpret the impact/intent of literary devices or connotative meaning of contextually used words and phrases and the impact of those word choices on reader interpretation of texts of low-to-moderate complexity.</li> </ul>
<b>READING</b> <b>Informational Text</b> <b>Targets</b> <b>8–14</b>	<ul style="list-style-type: none"> <li>• Identify textual evidence from sources across disciplines to support conclusions, inferences, connections, and steps to processes.</li> <li>• Partially summarize central ideas, topics/subtopics, key events, or procedures using some supporting ideas and details.</li> <li>• Partially determine connotative and denotative meanings of academic- and domain-specific words/phrases and words with multiple meanings, based on context-word relationships and word structures, and differentiate vocabulary meanings in texts of low-to-moderate complexity.</li> <li>• Partially apply reasoning and some textual evidence to justify inferences or interpret author's presentation of information; partially delineate and evaluate the argument assessing whether the reasoning is sound.</li> <li>• Partially analyze a case in which two or more texts provide conflicting information on the same topic and identify where the texts disagree on matters of fact or interpretation regarding the authors' point of view.</li> <li>• Partially relate knowledge of text structures and genre-specific features or formats of texts of low-to-moderate complexity to compare/analyze the impact of those choices on meaning or presentation.</li> <li>• Partially determine or interpret the impact/intent of literary devices or connotative meaning of words and phrases used in context and the impact of those word choices on reader interpretation of texts of low-to-moderate complexity.</li> </ul>
<b>WRITING</b> <b>Targets</b> <b>1–10</b>	<ul style="list-style-type: none"> <li>• Apply some narrative strategies, textual structures, and transitional strategies for coherence.</li> <li>• Use minimal relevant details when writing or revising brief narrative texts.</li> <li>• Use minimal support and elaboration when writing brief informational/explanatory texts.</li> <li>• Demonstrate some ability to use appropriate text features.</li> <li>• Produce argumentative texts and attempt to acknowledge a counterclaim.</li> <li>• Demonstrate some awareness of audience and purpose when writing.</li> <li>• Pay limited attention to word choice and/or syntax.</li> <li>• Plan, write, revise, and edit argument pieces demonstrating partial ability to state claims about topics or sources.</li> <li>• With some support use basic language appropriate to the purpose and audience when revising or composing text.</li> <li>• Apply or edit a piece of writing, demonstrating a partial understanding of Standard English</li> </ul>

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	<p>grammar conventions and usage (e.g., capitalization, punctuation, and spelling) when writing.</p> <ul style="list-style-type: none"> <li>• Demonstrate limited use of technology, including the Internet, to produce and publish writing.</li> </ul>
<b>SPEAKING/ LISTENING Target 4</b>	<ul style="list-style-type: none"> <li>• Have limited engagement and interaction with media and source materials and minimally account for elements that contribute to points of view.</li> </ul>
<b>RESEARCH/ INQUIRY Targets 1–4</b>	<ul style="list-style-type: none"> <li>• Demonstrate minimal research and evaluation skills.</li> <li>• Draw broad conclusions from source materials.</li> <li>• Construct a partial claim with limited use of evidence.</li> <li>• Attempt to summarize main ideas, topics, key events, or procedures in informational texts but use limited supporting or relevant ideas or evidence.</li> <li>• Develop an argument with a claim and minimal support.</li> </ul>
<b>The student who just enters Level 3 should be able to:</b>	
<b>READING Literary Text Targets 1–7</b>	<ul style="list-style-type: none"> <li>• Summarize central ideas/key events using relevant details from texts of moderate complexity to determine a theme and provide an objective summary specifically relating analysis to character, setting, and plot.</li> <li>• Determine precise meaning of words and distinguish connotative and figurative meanings of academic- and domain-specific words and phrases.</li> <li>• Cite a range of relevant textual evidence to justify analysis regarding theme, story elements, dialogue, and point of view (e.g., suspense, humor, dramatic irony) in texts of moderate complexity.</li> <li>• Analyze relationships among literary elements by comparing and contrasting theme within texts of moderate complexity or in differing versions of texts representing various genres and text types.</li> <li>• Analyze the structures of two or more texts and genre-specific features or formats of texts of moderate complexity and the impact of those choices on meaning or presentation.</li> <li>• Determine or interpret the impact/intent of literary devices or connotative meaning of contextually used words and phrases and the impact of those word choices on reader interpretation of texts of moderate complexity.</li> </ul>
<b>READING Informational Text Targets 8–14</b>	<ul style="list-style-type: none"> <li>• Identify several pieces of relevant textual evidence from sources across disciplines to support conclusions, inferences, connections, and steps to processes.</li> <li>• Summarize central ideas, topics/subtopics, key events, or procedures using relevant supporting ideas and details.</li> <li>• Determine connotative and denotative meanings of words and phrases.</li> <li>• Apply reasoning and a range of textual evidence to justify inferences or interpret author's presentation of information.</li> <li>• Analyze a case in which two or more texts provide conflicting information on the same topic and identify where the texts disagree on matters of fact or interpretation regarding the authors' points of view.</li> <li>• Relate knowledge of text structures and genre-specific features or formats of texts of moderate complexity to compare/analyze the impact of those choices on meaning or presentation.</li> <li>• Determine or interpret the impact/intent of literary devices or connotative meaning of words and phrases used in context and the impact of those word choices on reader interpretation of texts of moderate complexity.</li> </ul>



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<b>WRITING</b> <b>Targets</b> <b>1–10</b>	<ul style="list-style-type: none"> <li>• Apply some narrative strategies when writing or revising one or more paragraphs.</li> <li>• Write longer narrative texts demonstrating use of specific narrative strategies, structures, and appropriate transitional strategies for coherence.</li> <li>• Employ effective text features and visual components appropriate to purpose.</li> <li>• Demonstrate some ability to plan, write, revise, and edit full argument pieces demonstrating ability to state claims about topics or sources; attend to purpose and audience; organize ideas by stating a context and focus; include structures and appropriate transitional strategies for coherence; identify supporting evidence/reasons and elaboration from credible sources; and develop an appropriate conclusion.</li> <li>• Use a range of precise language and vocabulary (including academic words, domain-specific vocabulary, and figurative language) and style appropriate to the purpose and audience when revising or composing text.</li> <li>• Demonstrate some ability to edit a piece of writing, showing an understanding of Standard English grammar conventions and usage (e.g., capitalization, punctuation, and spelling) when writing.</li> <li>• Demonstrate some use of technology, including the Internet, to produce and publish writing.</li> </ul>
<b>SPEAKING/ LISTENING</b> <b>Target 4</b>	<ul style="list-style-type: none"> <li>• Engage and interact with media and source materials and account for elements that contribute to points of view.</li> </ul>
<b>RESEARCH/ INQUIRY</b> <b>Targets</b> <b>1–4</b>	<ul style="list-style-type: none"> <li>• Use research/inquiry methods to explore a topic.</li> <li>• Select from and adequately analyze sources from a variety of perspectives and present findings.</li> <li>• Adequately analyze authoritative sources of evidence with some diversity of formats to support a presentation.</li> <li>• Search for relevant authoritative information and evaluate the uses and limitations of source material.</li> <li>• Generate a specific debatable claim or main idea and cite some relevant evidence.</li> </ul>
<b>The student who just enters Level 4 should be able to:</b>	
<b>READING Literary Text</b> <b>Targets</b> <b>1–7</b>	<ul style="list-style-type: none"> <li>• Evaluate precise meaning of words and distinguish connotative and figurative meanings of academic- and domain-specific words and phrases.</li> <li>• Evaluate meaning of words with multiple meanings based on context-word relationships and word structures; thoroughly differentiate vocabulary meanings in texts of high complexity.</li> <li>• Summarize central ideas and key events using the most significant details from longer portions of texts of high complexity.</li> <li>• Cite strong and varied textual evidence to justify analysis regarding theme, story elements, dialogue, and point of view (e.g., suspense, humor, dramatic irony) in texts of high complexity.</li> <li>• Analyze relationships by comparing and contrasting them among literary elements within or across texts of high complexity.</li> <li>• Evaluate the structures of two or more texts and genre-specific features or formats of texts of high complexity and the impact of those choices on meaning or presentation.</li> <li>• Evaluate and interpret the impact and intent of literary devices or connotative meaning of contextually used words and phrases and the impact of those word choices on reader interpretation of texts of high complexity.</li> </ul>
<b>READING</b>	<ul style="list-style-type: none"> <li>• Identify several pieces of strong and varied textual evidence from sources across</li> </ul>



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<b>Informational Text Targets 8–14</b>	<p>disciplines to support conclusions, inferences, connections, and steps to processes.</p> <ul style="list-style-type: none"> <li>• Summarize central ideas, topics/subtopics, key events, or procedures using strong supporting ideas and details.</li> <li>• Determine connotative and denotative meanings of academic- and domain-specific words/phrases and words with multiple meanings, based on context-word relationships, word structures, and differentiating vocabulary meanings in texts of high complexity.</li> <li>• Apply reasoning and a range of textual evidence to justify inferences or interpret author's presentation of information.</li> <li>• Delineate and evaluate the argument assessing whether the reasoning is sound.</li> <li>• Effectively analyze a case in which two or more texts provide conflicting information on the same topic and identify where the texts disagree on matters of fact or interpretation regarding the authors' points of view.</li> <li>• Relate knowledge of text structures and genre-specific features or formats of texts of high complexity to compare/analyze the impact of those choices on meaning or presentation.</li> <li>• Evaluate or interpret the impact/intent of literary devices or connotative meaning of words and phrases used in context and the impact of those word choices on reader interpretation of texts of high complexity.</li> </ul>
<b>WRITING Targets 1–10</b>	<ul style="list-style-type: none"> <li>• Demonstrate effective use of multiple, specific narrative strategies, structures, and appropriate transitional strategies for coherence.</li> <li>• Demonstrate effective use of precise words and phrases and use relevant descriptive details and sensory language to convey experiences or authors' craft appropriate to purpose, including a conclusion that reflects on the narrated experience.</li> <li>• Demonstrate use of multiple, specific narrative strategies, structures, and appropriate transitional strategies for coherence when writing longer narrative texts.</li> <li>• Demonstrate effective use of precise language and formal style to organize ideas by stating a focus when writing or revising more than one informational or explanatory paragraph.</li> <li>• Employ advanced text features and visual components appropriate to purpose.</li> <li>• Effectively use an extensive range of language and vocabulary (including academic words, domain-specific vocabulary, and figurative language) and style appropriate to the purpose and audience when revising or composing text.</li> <li>• Effectively write or edit texts, demonstrating a strong understanding of Standard English grammar conventions and usage (e.g., capitalization, punctuation, and spelling).</li> <li>• Effectively use technology, including the Internet, to produce and publish writing.</li> </ul>
<b>SPEAKING/ LISTENING Target 4</b>	<ul style="list-style-type: none"> <li>• Thoroughly engage and interact with media and source materials and account for elements that contribute to points of view.</li> </ul>
<b>RESEARCH/ INQUIRY Targets 1–4</b>	<ul style="list-style-type: none"> <li>• Employ multimodal resources to advance a sustained exploration of a topic.</li> <li>• Synthesize multiple sources of relevant, authoritative information and discriminate among them to support an analysis.</li> <li>• Search for relevant information from diverse authoritative sources.</li> <li>• Systematically evaluate uses and limitations of sources.</li> <li>• Generate an authoritative claim.</li> <li>• Evaluate and cite substantial, relevant evidence.</li> </ul>

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The student who just enters Level 2 should be able to:	
<b>READING</b> <b>Literary Text</b> <b>Targets</b> <b>1–7</b>	<ul style="list-style-type: none"> <li>• Identify key textual evidence to attempt to support simple inferences or conclusions.</li> <li>• Provide a simple summary of key events and/or details of a text.</li> <li>• Use sentence- and paragraph-level context and resources to determine meanings of most grade-level words.</li> <li>• Apply partial reasoning and use key textual evidence to begin to justify inferences or judgments made about text.</li> <li>• Analyze some interrelationships of literary elements in texts of low to moderate complexity.</li> <li>• Describe basic text structures and genre-specific features or formats and show a limited understanding of their impact.</li> <li>• Identify elements that contribute to points of view and how they impact meaning.</li> <li>• Identify and determine meaning and impact of figurative language.</li> </ul>
<b>READING</b> <b>Informational Text</b> <b>Targets</b> <b>8–14</b>	<ul style="list-style-type: none"> <li>• Identify key textual evidence to attempt to support simple inferences, analysis, interpretations, or conclusions.</li> <li>• Provide a simple summary of key events and/or details of a text.</li> <li>• Use sentence- and paragraph-level context and resources to determine meanings of words.</li> <li>• Apply partial reasoning and use key textual evidence to begin to justify inferences or judgments made about text.</li> <li>• Analyze the connection of ideas within and between texts of low-to-moderate complexity.</li> <li>• Describe basic text structures and genre-specific features or formats and show a limited understanding of their impact.</li> <li>• Demonstrate emerging knowledge of obvious genre interpretations and ideas.</li> <li>• Have limited engagements and interaction with source materials in common.</li> <li>• Partially account for elements that contribute to points of view.</li> <li>• Identify and begin to determine meaning and impact of figurative language.</li> </ul>
<b>WRITING</b> <b>Targets:</b> <b>1 and</b> <b>3–10</b>	<ul style="list-style-type: none"> <li>• Apply some narrative strategies, textual structures, and transitional strategies for coherence.</li> <li>• Use minimal relevant details when writing or revising brief narrative texts.</li> <li>• Use minimal support and elaboration when writing brief informational/explanatory texts.</li> <li>• Demonstrate some ability to use appropriate text features.</li> <li>• Produce argumentative texts and attempt to acknowledge a counterclaim.</li> <li>• Demonstrate some awareness of audience and purpose when writing.</li> <li>• Pay limited attention to word choice and/or syntax.</li> <li>• Demonstrate some understanding of the conventions of grade-appropriate Standard English grammar usage and mechanics to clarify a message.</li> <li>• Apply some revisions to narrative, informational, and argument texts.</li> <li>• Use basic technology, with support, for gathering information, making revisions, or producing texts.</li> </ul>
<b>SPEAKING/ LISTENING</b> <b>Target 4</b>	<ul style="list-style-type: none"> <li>• Have limited engagement and interaction with media and source materials and minimally account for elements that contribute to points of view.</li> </ul>
<b>RESEARCH/ INQUIRY</b> <b>Targets</b>	<ul style="list-style-type: none"> <li>• Demonstrate minimal research and evaluation skills.</li> <li>• Draw broad conclusions from source materials.</li> </ul>

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<b>1–4</b>	<ul style="list-style-type: none"> <li>• Construct a partial or undeveloped claim with limited use of evidence.</li> <li>• Attempt to summarize main ideas, topics, key events, or procedures in informational texts but use limited supporting or relevant ideas or evidence.</li> <li>• Develop an argument with a claim and minimal support.</li> </ul>
<b>The student who just enters Level 3 should be able to:</b>	
<b>READING</b> <b>Literary Text</b> <b>Targets</b> <b>1–7</b>	<ul style="list-style-type: none"> <li>• Cite adequate textual evidence to support most inferences made or conclusions drawn about texts of moderate complexity.</li> <li>• Summarize themes and some analysis of thematic development over the course of the text using relevant details.</li> <li>• Determine intended meanings of most words, including distinguishing connotation/denotation, figurative language, and words with multiple meanings based on context, word patterns, word relationships, etymology, or use of specialized resources.</li> <li>• Apply sufficient reasoning and a range of textual evidence to justify most inferences or judgments made about texts.</li> <li>• Adequately analyze interrelationships among literary elements within a text or multiple interpretations of text (including texts from the same period with similar themes, topics, or source materials).</li> <li>• Partially analyze text structures, genre-specific features, or formats (visual/graphic/auditory effects) of text and explain the impact(s) of those choices on meaning or presentation.</li> <li>• Partially analyze the figurative (e.g., euphemism, oxymoron, hyperbole, paradox) and connotative meanings of words and phrases used in context and the impact(s) of those word choices on meaning and tone.</li> </ul>
<b>READING</b> <b>Informational Text</b> <b>Targets</b> <b>8–14</b>	<ul style="list-style-type: none"> <li>• Cite adequate textual evidence to support most inferences made or conclusions drawn about texts of moderate complexity.</li> <li>• Summarize central ideas, topics, key events, or procedures from a text using sufficient supporting ideas and relevant details.</li> <li>• Determine intended meanings of most words, including distinguishing connotation/denotation, figurative language, and words with multiple meanings based on context, word patterns, word relationships, etymology, or use of specialized resources.</li> <li>• Apply reasoning and a sufficient range of textual evidence to justify analyses of author's presentation of moderately complex information.</li> <li>• Adequately support a basic analysis of a moderately complex text to show how some connections are made in development of ideas or events or development of topics, themes, or rhetorical features.</li> <li>• Adequately support a basic analysis of text structures and/or text features and determine an impact of text structures and/or text features on meaning or presentation.</li> <li>• Partially analyze the figurative (e.g., euphemism, oxymoron, hyperbole, paradox) or connotative meanings of words and phrases used in context and partially explain the impact of these word choices on meaning and tone.</li> </ul>
<b>WRITING</b> <b>Targets</b> <b>1 and</b> <b>3–10</b>	<ul style="list-style-type: none"> <li>• Apply some narrative strategies, text structures, and some transitional strategies for coherence using some relevant details and precise words and phrases in writing or revising brief narrative texts.</li> <li>• Apply some strategies when writing or revising brief informational/explanatory texts to develop a topic by organizing ideas, using appropriate language to maintain a suitable focus/tone, and including some relevant supporting evidence.</li> </ul>

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	<ul style="list-style-type: none"> <li>• Write full informational/explanatory texts appropriate for purpose and audience by organizing ideas, using appropriate language to maintain a suitable focus/ton e, and gathering, assessing, and integrating some relevant supporting evidence from both print and digital sources.</li> <li>• Use text features (e.g., formatting, graphics, multimedia) with some attention to audience and purpose.</li> <li>• Apply strategies when writing or revising brief argumentative texts to develop a claim by organizing and citing some supporting evidence and counterclaims, providing transitional strategies for coherence, and using language to maintain a suitable focus/ton e.</li> <li>• Write full argumentative texts to develop a specific claim by integrating some relevant supporting evidence from both print and digital sources, to develop claims and counterclaims that are appropriate for audience and purpose, to provide a concluding statement, and to use language to maintain a suitable focus/ton e.</li> <li>• Demonstrate attempts to use varied syntax, vocabulary (including some academic and domain-specific vocabulary and figurative language), and style appropriate to the purpose and audience when revising and composing texts.</li> <li>• Apply and edit most conventions of grade-appropriate, Standard English grammar usage and mechanics.</li> <li>• Follow directions when using tools of technology to gather information, make revisions, or produce texts.</li> </ul>
<b>SPEAKING/ LISTENING Target 4</b>	<ul style="list-style-type: none"> <li>• Synthesize content from source materials and media, discriminating for relevance among a range of rhetorical presentations of information.</li> <li>• Listen for point of view and begin to analyze perspective and motivation in a speaker's assumptions, connections, use of vocabulary, unstated premises, and rhetorical choices.</li> </ul>
<b>RESEARCH/ INQUIRY Targets 1–4</b>	<ul style="list-style-type: none"> <li>• Use research/inquiry methods to explore a topic.</li> <li>• Select from and adequately analyze sources from a variety of perspectives and present findings.</li> <li>• Adequately analyze authoritative sources of evidence with some diversity of formats to support a presentation.</li> <li>• Search for relevant authoritative information and evaluate the uses and limitations of source material.</li> <li>• Generate a specific debatable claim or main idea and cite some relevant evidence.</li> </ul>
<b>The student who just enters Level 4 should be able to:</b>	
<b>READING Literary Text Targets 1–7</b>	<ul style="list-style-type: none"> <li>• Identify and analyze textual evidence in texts of high complexity.</li> <li>• Provide an effective summary and analysis of thematic development over the course of a text using an appropriate level of relevant evidence.</li> <li>• Determine intended, precise, or nuanced meanings of words, including distinguishing connotation/denotation, figurative language, words with multiple meanings, and specialized academic language.</li> <li>• Apply reasoning and a thorough range of textual evidence to justify inferences or judgments made about texts.</li> <li>• Analyze the figurative and connotative meanings of words and phrases used in context and explain the complex impact(s) of those word choices on meaning and tone.</li> <li>• Apply reasoning and a range of textual evidence to justify inferences and judgments made about texts of high complexity.</li> </ul>

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	<ul style="list-style-type: none"> <li>• Analyze the interrelationships among literary elements in texts of high complexity to show how connections are made in development of complex ideas or events.</li> <li>• Analyze the effectiveness and impact of text structures and/or text features of texts of high complexity.</li> <li>• Analyze figurative and connotative meanings of words and phrases in texts of high complexity.</li> </ul>
<b>READING</b> <b>Informational Text</b> <b>Targets 8–14</b>	<ul style="list-style-type: none"> <li>• Identify and analyze textual evidence in texts of high complexity.</li> <li>• Provide full analysis of the development of central ideas over the course of a text using an appropriate level of relevant evidence.</li> <li>• Determine intended, precise, or nuanced meanings of words, including distinguishing connotation/ denotation, figurative language, words with multiple meanings, and specialized academic language.</li> <li>• Apply reasoning and a full range of textual evidence to justify inferences and judgments made about texts of high complexity.</li> <li>• Analyze the figurative and connotative meanings of words and phrases used in context and explain the complex impact(s) of those word choices on meaning and tone.</li> <li>• Apply thorough reasoning and a range of textual evidence to justify analyses of author's presentation of information in texts of high complexity.</li> <li>• Analyze texts of high complexity to show how connections are made in development of complex ideas or events.</li> <li>• Analyze the effectiveness and impact of text structures and/or text features of highly complex texts.</li> <li>• Analyze figurative and connotative meanings of words and phrases in texts of high complexity.</li> </ul>
<b>WRITING</b> <b>Targets 1 and 3–10</b>	<ul style="list-style-type: none"> <li>• Apply effective writing strategies and processes when writing and revising texts for all purposes.</li> <li>• Use precise language.</li> <li>• Use relevant and persuasive evidence.</li> <li>• Assess and synthesize supporting evidence.</li> <li>• Select technological tools based on appropriateness.</li> <li>• Apply grade-appropriate editing and revising skills.</li> </ul>
<b>SPEAKING/ LISTENING</b> <b>Target 4</b>	<ul style="list-style-type: none"> <li>• Synthesize diverse source materials from diverse perspectives delivered orally or through audiovisual materials.</li> <li>• Systematically evaluate the ways that uses of evidence, implicit premises, and rhetorical stylistic choices enhance or undermine points of view.</li> </ul>
<b>RESEARCH/ INQUIRY</b> <b>Targets 1–4</b>	<ul style="list-style-type: none"> <li>• Employ multimodal resources to advance a persuasive and sustained exploration of a topic.</li> <li>• Synthesize multiple sources of relevant, authoritative information and discriminate among them to support an analysis.</li> <li>• Search for relevant information from diverse authoritative sources.</li> <li>• Systematically evaluate the uses and limitations of sources.</li> <li>• Generate authoritative claim.</li> <li>• Evaluate and cite substantial, relevant evidence.</li> </ul>

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The student who just enters Level 2 should be able to:	
<b>CONCEPTS AND PROCEDURES</b> <b>Targets A, B, C, and D:</b> <b>Operations and Algebraic Thinking</b>	<ul style="list-style-type: none"> <li>• Use multiplication and division within 100 to solve one-step mathematical problems involving arrays.</li> <li>• Determine the unknown number in a multiplication equation relating three whole numbers.</li> <li>• Apply the Commutative property of multiplication to mathematical problems with one-digit factors.</li> <li>• Recall from memory all products of two one-digit numbers.</li> <li>• Solve one- and two-step problems using all four operations with one- and two-digit numbers.</li> <li>• Identify patterns in the addition table.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Target E:</b> <b>Number and Operations – Base Ten</b>	<ul style="list-style-type: none"> <li>• Round whole numbers to the nearest 10 or 100.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Target F:</b> <b>Number and Operations– Fractions</b>	<ul style="list-style-type: none"> <li>• Identify a fraction on a number line.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Targets G and I:</b> <b>Measurement and Data</b>	<ul style="list-style-type: none"> <li>• Tell and write time to the nearest minute and measure liquid volumes and masses of objects using metric units of liters, grams, and kilograms.</li> <li>• Count unit squares to find the area of rectilinear figures.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Targets H and J:</b> <b>Measurement and Data</b>	<ul style="list-style-type: none"> <li>• Generate measurement data by measuring lengths using rulers marked with half-inch intervals.</li> <li>• Solve mathematical problems involving perimeters of polygons, including finding an unknown side length given the perimeter.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Target K:</b> <b>Geometry</b>	<ul style="list-style-type: none"> <li>• Partition shapes into parts with equal areas.</li> </ul>
<b>PROBLEM SOLVING &amp; MODELING AND DATA ANALYSIS</b>	<ul style="list-style-type: none"> <li>• Select tools to solve a familiar and moderately scaffolded problem and apply them with partial accuracy.</li> <li>• Use the necessary elements given in a problem situation to solve a problem.</li> <li>• Apply mathematics to propose solutions by identifying important quantities and by locating missing information from relevant external resources.</li> </ul>
<b>COMMUNICATING REASONING</b>	<ul style="list-style-type: none"> <li>• Find and identify the flaw in an argument.</li> </ul>

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The student who just enters Level 3 should be able to:	
<b>CONCEPTS AND PROCEDURES</b> <b>Targets A, B, C, and D:</b> <b>Operations and Algebraic Thinking</b>	<ul style="list-style-type: none"> <li>• Select the appropriate operation to solve one-step problems involving equal groups and arrays.</li> <li>• Use the properties of operations to multiply within the 10 by 10 multiplication table.</li> <li>• Fluently multiply within 100.</li> <li>• Solve two-step problems using addition and subtraction with numbers larger than 100 and solutions within 1,000.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Target E:</b> <b>Number and Operations – Base Ten</b>	<ul style="list-style-type: none"> <li>• Fluently add within 1,000, using strategies or algorithms based on place value understanding, properties of arithmetic, and/or the relationship between addition and subtraction.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Target F:</b> <b>Number and Operations– Fractions</b>	<ul style="list-style-type: none"> <li>• Represent a fraction on a number line with partitioning.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Targets G and I:</b> <b>Measurement and Data</b>	<ul style="list-style-type: none"> <li>• Estimate liquid volumes and masses of objects using standard units of grams, kilograms, and liters.</li> <li>• Find the area of a rectilinear figure by multiplying side lengths and by decomposing a rectilinear figure into non-overlapping rectangles and adding them together.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Targets H and J:</b> <b>Measurement and Data</b>	<ul style="list-style-type: none"> <li>• Generate measurement data by measuring length using rulers marked with quarter-inch intervals and represent the data on a line plot marked with quarter-inch intervals.</li> <li>• Solve word problems involving perimeters of polygons.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Target K:</b> <b>Geometry</b>	<ul style="list-style-type: none"> <li>• Draw examples of quadrilaterals that do not belong to given subcategories by reasoning about their attributes.</li> </ul>
<b>PROBLEM SOLVING &amp; MODELING AND DATA ANALYSIS</b>	<ul style="list-style-type: none"> <li>• Use appropriate tools to accurately solve problems arising in everyday life, society, and the workplace.</li> <li>• Apply mathematics to solve problems by identifying important quantities and mapping their relationship and by stating and using logical assumptions.</li> </ul>
<b>COMMUNICATING REASONING</b>	<ul style="list-style-type: none"> <li>• Use stated assumptions, definitions, and previously established results and examples to identify and repair a flawed argument.</li> <li>• Use previous information to support his or her own reasoning on a routine problem.</li> </ul>

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The student who just enters Level 4 should be able to:	
<b>CONCEPTS AND PROCEDURES</b> <b>Targets A, B, C, and D:</b> <b>Operations and Algebraic Thinking</b>	<ul style="list-style-type: none"> <li>• Use multiplication and division within 100 to solve one-step problems involving measurement quantities of two- or three-digit whole numbers.</li> <li>• Apply strategies in multiplication.</li> <li>• Use relevant ideas or procedures to multiply.</li> <li>• Explain arithmetic patterns.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Target E:</b> <b>Number and Operations – Base Ten</b>	<ul style="list-style-type: none"> <li>• Use multiple strategies to fluently add within 1,000.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Target F:</b> <b>Number and Operations– Fractions</b>	<ul style="list-style-type: none"> <li>• Represent a fraction approximately on a number line with no partitioning.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Targets G and I:</b> <b>Measurement and Data</b>	<ul style="list-style-type: none"> <li>• Solve one-step addition problems involving all time intervals from hours to minutes.</li> <li>• Find the area of a rectilinear figure in a word problem.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Targets H and J:</b> <b>Measurement and Data</b>	<ul style="list-style-type: none"> <li>• N/A</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Target K:</b> <b>Geometry</b>	<ul style="list-style-type: none"> <li>• N/A</li> </ul>
<b>PROBLEM SOLVING &amp; MODELING AND DATA ANALYSIS</b>	<ul style="list-style-type: none"> <li>• Analyze and interpret the context of an unfamiliar situation for problems of increasing complexity.</li> <li>• Begin to solve problems optimally.</li> <li>• Construct multiple plausible solutions and approaches.</li> </ul>
<b>COMMUNICATING REASONING</b>	<ul style="list-style-type: none"> <li>• Begin to construct chains of logic about abstract concepts autonomously.</li> </ul>



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The student who just enters Level 2 should be able to:	
<b>CONCEPTS AND PROCEDURES</b> Target A: Operations and Algebraic Thinking	<ul style="list-style-type: none"> <li>• Add and subtract to solve one-step problems involving an unknown number.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> Targets B and C: Operations and Algebraic Thinking	<ul style="list-style-type: none"> <li>• Determine whether a given whole number in the range of 1–100 is a multiple of a given one-digit number.</li> <li>• Generate a shape pattern that follows a given rule.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> Targets D and E: Number and Operations – Base Ten	<ul style="list-style-type: none"> <li>• Look for and use repeated reasoning to generalize place value understanding in order to read and write multi-digit whole numbers less than or equal to 100,000 using base-ten numerals and number names.</li> <li>• Use place value understanding to add and subtract two- and three-digit whole numbers using a standard algorithm.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> Targets F, G, and H: Number and Operations – Fractions	<ul style="list-style-type: none"> <li>• Recognize equivalent fractions using visual models.</li> <li>• Use visual fraction models to represent a problem.</li> <li>• Express a fraction with denominator 10 as an equivalent fraction with denominator 100.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> Targets I, J, and K: Measurement and Data	<ul style="list-style-type: none"> <li>• Apply the perimeter formula to rectangles in mathematical problems.</li> <li>• Use data from a given line plot using fractions <math>\frac{1}{2}</math>, <math>\frac{1}{4}</math>, and <math>\frac{1}{8}</math> to solve one-step problems.</li> <li>• Recognize whole-number degrees on a protractor.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> Target L: Geometry	<ul style="list-style-type: none"> <li>• Identify points, lines, line segments, and rays.</li> </ul>
<b>PROBLEM SOLVING &amp; MODELING AND DATA ANALYSIS</b>	<ul style="list-style-type: none"> <li>• Select tools to solve a familiar and moderately scaffolded problem and apply them with partial accuracy.</li> <li>• Use the necessary elements given in a problem situation to solve a problem.</li> <li>• Apply mathematics to propose solutions by identifying important quantities and by locating missing information from relevant external resources.</li> </ul>
<b>COMMUNICATING REASONING</b>	<ul style="list-style-type: none"> <li>• Find and identify the flaw in an argument.</li> </ul>

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The student who just enters Level 3 should be able to:	
<b>CONCEPTS AND PROCEDURES</b> Target A: Operations and Algebraic Thinking	<ul style="list-style-type: none"> <li>• Multiply and divide to solve one-step problems involving equal groups or arrays.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> Targets B and C: Operations and Algebraic Thinking	<ul style="list-style-type: none"> <li>• Find factor pairs for whole numbers in the range of 1–100.</li> <li>• Identify apparent features of a pattern in a problem with scaffolding.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> Targets D and E: Number and Operations – Base Ten	<ul style="list-style-type: none"> <li>• Read and write multi-digit whole numbers less than or equal to 1,000,000 using base-ten numerals, number names, and expanded form.</li> <li>• Multiply four-digit whole numbers by a one-digit number.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> Targets F, G, and H: Number and Operations – Fractions	<ul style="list-style-type: none"> <li>• Generate equivalent fractions using visual models.</li> <li>• Identify and generate equivalent forms of a fraction with like denominators.</li> <li>• Add two fractions with respective denominators 10 and 100.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> Targets I, J, and K: Measurement and Data	<ul style="list-style-type: none"> <li>• Represent measurement quantities using diagrams such as number line diagrams that feature a measurement scale.</li> <li>• Interpret data from a line plot to solve problems involving addition of fractions with like denominators by using information presented in line plots.</li> <li>• Construct angles between 0 and 180 degrees in whole-number degrees using a protractor.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> Target L: Geometry	<ul style="list-style-type: none"> <li>• Draw lines of symmetry for two-dimensional figures.</li> </ul>
<b>PROBLEM SOLVING &amp; MODELING AND DATA ANALYSIS</b>	<ul style="list-style-type: none"> <li>• Use appropriate tools to accurately solve problems arising in everyday life, society, and the workplace.</li> <li>• Apply mathematics to solve problems by identifying important quantities and mapping their relationship and by stating and using logical assumptions.</li> </ul>
<b>COMMUNICATING REASONING</b>	<ul style="list-style-type: none"> <li>• Use stated assumptions, definitions, and previously established results and examples to identify and repair a flawed argument.</li> <li>• Use previous information to support his or her own reasoning on a routine problem.</li> </ul>

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The student who just enters Level 4 should be able to:	
<b>CONCEPTS AND PROCEDURES</b> Target A: Operations and Algebraic Thinking	<ul style="list-style-type: none"> <li>Assess the reasonableness of answers using mental computation and estimation strategies, including rounding.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> Targets B and C: Operations and Algebraic Thinking	N/A
<b>CONCEPTS AND PROCEDURES</b> Targets D and E: Number and Operations – Base Ten	N/A
<b>CONCEPTS AND PROCEDURES</b> Targets F, G, and H: Number and Operations – Fractions	<ul style="list-style-type: none"> <li>Compare two fractions with different numerators and different denominators using <math>&lt;</math>, <math>&gt;</math>, and <math>=</math>.</li> <li>Compare two decimals to the hundredths using <math>&lt;</math>, <math>&gt;</math>, and <math>=</math> or a number line and justify the conclusions by using visual models.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> Targets I, J, and K: Measurement and Data	<ul style="list-style-type: none"> <li>Apply the perimeter formula to rectangles in real-world problems.</li> <li>Solve addition problems to find unknown angles on a diagram in mathematical problems.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> Target L: Geometry	N/A
<b>PROBLEM SOLVING &amp; MODELING AND DATA ANALYSIS</b>	<ul style="list-style-type: none"> <li>Analyze and interpret the context of an unfamiliar situation for problems of increasing complexity.</li> <li>Begin to solve problems optimally.</li> <li>Construct multiple plausible solutions and approaches.</li> </ul>
<b>COMMUNICATING REASONING</b>	<ul style="list-style-type: none"> <li>Begin to construct chains of logic about abstract concepts autonomously.</li> </ul>

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Grade 5 Mathematics**

The student who just enters Level 2 should be able to:	
<b>CONCEPTS AND PROCEDURES</b> <b>Targets A and B:</b> <b>Operations and Algebraic Thinking</b>	<ul style="list-style-type: none"> <li>• Write numerical expressions having one set of parentheses, brackets, or braces.</li> <li>• Graph whole number ordered pairs from two whole number numerical patterns on a coordinate plane.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Targets C and D:</b> <b>Number and Operations – Base Ten</b>	<ul style="list-style-type: none"> <li>• Understand that in a multi-digit number, a digit in one place represents 10 times as much as it represents in the place to its right.</li> <li>• Demonstrate accuracy in multiplying multi-digit whole numbers and in finding whole number quotients of whole numbers with up to four-digit dividends and two-digit divisors.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Targets E and F:</b> <b>Number and Operations – Fractions</b>	<ul style="list-style-type: none"> <li>• Add two fractions and/or mixed numbers with unlike denominators (denominators less than or equal to 6) in mathematical problems.</li> <li>• Use benchmark fractions to estimate and assess the reasonableness of answers (denominators less than or equal to 6).</li> <li>• Multiply a whole number by a mixed number.</li> <li>• Know the effect that a fraction greater than or less than 1 has on a whole number when multiplied.</li> <li>• Use visual models when multiplying two fractions between 0 and 1.</li> <li>• Perform division of a whole number by any unit fraction.</li> <li>• Understand that division of whole numbers can result in fractions.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Targets G and H:</b> <b>Measurement and Data</b>	<ul style="list-style-type: none"> <li>• Convert a whole number measurement to a decimal or fractional valued measurement within the same system (e.g., 30 in = ____ ft).</li> <li>• Make a line plot and display data sets in whole and half units.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Target I:</b> <b>Measurement and Data</b>	<ul style="list-style-type: none"> <li>• Understand the concept that the volume of a rectangular prism packed with unit cubes is related to the edge lengths.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Targets J and K:</b> <b>Geometry</b>	<ul style="list-style-type: none"> <li>• Graph whole number coordinate pairs on a coordinate plane with whole number increments of 2, 5, and 10.</li> <li>• Classify two-dimensional figures into categories by their attributes or properties.</li> </ul>
<b>PROBLEM SOLVING &amp; MODELING AND DATA ANALYSIS</b>	<ul style="list-style-type: none"> <li>• Select tools to solve a familiar and moderately scaffolded problem and apply them with partial accuracy.</li> <li>• Use the necessary elements given in a problem situation to solve a problem.</li> <li>• Apply mathematics to propose solutions by identifying important quantities and by locating missing information from relevant external resources.</li> </ul>
<b>COMMUNICATING REASONING</b>	<ul style="list-style-type: none"> <li>• Find and identify the flaw in an argument.</li> </ul>

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The student who just enters Level 3 should be able to:	
<b>CONCEPTS AND PROCEDURES</b> <b>Targets A and B:</b> <b>Operations and Algebraic Thinking</b>	<ul style="list-style-type: none"> <li>• Write and interpret expressions with two different operations.</li> <li>• Compare two related numerical patterns within sequences and tables.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Targets C and D:</b> <b>Number and Operations – Base Ten</b>	<ul style="list-style-type: none"> <li>• Use whole number exponents to denote powers of 10; round decimals to the thousandths; and read, write, and compare decimals to the thousandths using base-ten numerals, number names, and expanded form, using <math>&gt;</math>, <math>=</math>, and <math>&lt;</math> to record the results of the comparison.</li> <li>• Fluently multiply multi-digit whole numbers and find whole number quotients of whole numbers with up to four-digit dividends and two-digit divisors.</li> <li>• Perform the four operations on decimals to the hundredths.</li> <li>• Relate a strategy to a written method and explain the reasoning used.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Targets E and F:</b> <b>Number and Operations – Fractions</b>	<ul style="list-style-type: none"> <li>• Subtract fractions and mixed numbers with unlike denominators in word problems.</li> <li>• Use benchmark fractions and number sense of fractions to estimate and assess the reasonableness of answers.</li> <li>• Multiply a mixed number by a mixed number.</li> <li>• Use visual models when multiplying two fractions, including when one fraction is larger than 1.</li> <li>• Interpret division of a whole number by any unit fraction.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Targets G and H:</b> <b>Measurement and Data</b>	<ul style="list-style-type: none"> <li>• Convert from a smaller unit of measurement to a larger one, resulting in one decimal place (metric system) or a small denominator fraction (standard system).</li> <li>• Make a line plot to display data sets in fractions of a unit (<math>\frac{1}{2}</math>, <math>\frac{1}{4}</math>, <math>\frac{1}{8}</math>).</li> <li>• Solve one-step problems using information from line plots that require addition, subtraction, and multiplication of fractions.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Target I:</b> <b>Measurement and Data</b>	<ul style="list-style-type: none"> <li>• Use <math>V = lwh</math> and <math>V = Bh</math> to find the volume of rectangular prisms.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Targets J and K:</b> <b>Geometry</b>	<ul style="list-style-type: none"> <li>• Graph coordinate pairs where one term is a whole number and one is a fraction with a denominator of 2 or 4 on a coordinate plane with whole number axis increments.</li> <li>• Classify two-dimensional figures into subcategories by their attributes or properties.</li> </ul>
<b>PROBLEM SOLVING &amp; MODELING AND DATA ANALYSIS</b>	<ul style="list-style-type: none"> <li>• Use appropriate tools to accurately solve problems arising in everyday life, society, and the workplace.</li> <li>• Apply mathematics to solve problems by identifying important quantities and mapping their relationship and by stating and using logical assumptions.</li> </ul>
<b>COMMUNICATING REASONING</b>	<ul style="list-style-type: none"> <li>• Use stated assumptions, definitions, and previously established results and examples to identify and repair a flawed argument.</li> <li>• Use previous information to support his or her own reasoning on a routine problem.</li> </ul>

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The student who just enters Level 4 should be able to:	
<b>CONCEPTS AND PROCEDURES</b> Targets A and B: Operations and Algebraic Thinking	<ul style="list-style-type: none"> <li>• Compare two related numerical patterns and explain the relationship within sequences of ordered pairs that are rational numbers.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> Targets C and D: Number and Operations – Base Ten	<ul style="list-style-type: none"> <li>• Combine multiplying by powers of 10, comparing, and rounding to highlight essential understandings</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> Targets E and F: Number and Operations – Fractions	<ul style="list-style-type: none"> <li>• Use or create visual models when multiplying two fractions that are larger than 1.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> Targets G and H: Measurement and Data	N/A
<b>CONCEPTS AND PROCEDURES</b> Target I: Measurement and Data	<ul style="list-style-type: none"> <li>• Find the volume of a right rectangular prism after doubling the edge length of a side with a whole number measurement and compare it to the original.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> Targets J and K: Geometry	<ul style="list-style-type: none"> <li>• Graph coordinate pairs where one term is a whole number and one is a fraction on a coordinate plane with fractional axis increments of <math>\frac{1}{2}</math>, <math>\frac{1}{4}</math>, or <math>\frac{1}{10}</math>.</li> </ul>
<b>PROBLEM SOLVING &amp; MODELING AND DATA ANALYSIS</b>	<ul style="list-style-type: none"> <li>• Analyze and interpret the context of an unfamiliar situation for problems of increasing complexity.</li> <li>• Begin to solve problems optimally.</li> <li>• Construct multiple plausible solutions and approaches.</li> </ul>
<b>COMMUNICATING REASONING</b>	<ul style="list-style-type: none"> <li>• Begin to construct chains of logic about abstract concepts autonomously.</li> </ul>

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The student who just enters Level 2 should be able to:	
<b>CONCEPTS AND PROCEDURES</b> Target A: Ratios and Proportional Relationships	<ul style="list-style-type: none"> <li>Find unit rates given two whole number quantities where one evenly divides the other.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> Targets B and C: The Number System	<ul style="list-style-type: none"> <li>Divide a whole number by a fraction between 0 and 1 and be able to connect to a visual model.</li> <li>Add and subtract multi-digit decimals.</li> <li>Find common factors of two numbers less than or equal to 40.</li> <li>Find multiples of two numbers less than or equal to 12.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> Target D: The Number System	<ul style="list-style-type: none"> <li>Order fractions and integers.</li> <li>Place integer pairs on a coordinate plane with axis increments of 2, 5, or 10.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> Targets E, F, and G: Expressions and Equations	<ul style="list-style-type: none"> <li>Evaluate expressions with and without variables and without exponents.</li> <li>Write one- and two-step algebraic expressions introducing a variable.</li> <li>Solve one-variable equations and inequalities of the form <math>x + p = / \leq / \geq / &lt; / &gt; q</math> or <math>px = / \leq / \geq / &lt; / &gt; q</math>, where <math>p</math> and <math>q</math> are nonnegative rational numbers.</li> <li>Given a table of values for a linear relationship (<math>y = kx</math> or <math>y = x \pm c</math>), create the equation.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> Target H: Geometry	<ul style="list-style-type: none"> <li>Find areas of special quadrilaterals and triangles.</li> <li>Draw polygons in the four-quadrant plane.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> Targets I and J: Statistics and Probability	<ul style="list-style-type: none"> <li>Understand that questions that lead to variable responses are statistical questions and vice versa.</li> <li>Identify a reasonable measure of central tendency for a given set of numerical data.</li> <li>Find mean and median.</li> </ul>
<b>PROBLEM SOLVING &amp; MODELING AND DATA ANALYSIS</b>	<ul style="list-style-type: none"> <li>Select tools to solve a familiar and moderately scaffolded problem and apply them with partial accuracy.</li> <li>Use the necessary elements given in a problem situation to solve a problem.</li> <li>Apply mathematics to propose solutions by identifying important quantities and by locating missing information from relevant external resources.</li> </ul>
<b>COMMUNICATING REASONING</b>	<ul style="list-style-type: none"> <li>Find and identify the flaw in an argument.</li> </ul>

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The student who just enters Level 3 should be able to:	
<b>CONCEPTS AND PROCEDURES</b> <b>Target A:</b> <b>Ratios and Proportional Relationships</b>	<ul style="list-style-type: none"> <li>Solve unit rate problems.</li> <li>Solve percent problems by finding the whole, given a part and the percent.</li> <li>Describe a ratio relationship between any two number quantities and understand the concept of unit rate in problems (denominators less than or equal to 12).</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Targets B and C:</b> <b>The Number System</b>	<ul style="list-style-type: none"> <li>Apply and extend previous understandings of multiplication and division to divide a mixed number by a fraction and be able to connect to a visual model.</li> <li>Multiply and divide multi-digit decimal numbers.</li> <li>Find the greatest common factor of two numbers less than or equal to 100 and the least common multiple of two numbers less than or equal to 12.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Target D:</b> <b>The Number System</b>	<ul style="list-style-type: none"> <li>Place points with rational coordinates on a coordinate plane and combine absolute value and ordering, with or without models (<math> -3  &lt;  -5 </math>).</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Targets E, F, and G:</b> <b>Expressions and Equations</b>	<ul style="list-style-type: none"> <li>Write and evaluate numerical expressions without exponents and expressions from formulas in real-world problems.</li> <li>Identify equivalent expressions.</li> <li>Write one-variable equations and inequalities of the form <math>x + p = \leq/\geq/&lt;/&gt; q</math> or <math>px = \leq/\geq/&lt;/&gt; q</math>, where <math>p</math> and <math>q</math> are nonnegative rational numbers.</li> <li>Graph solutions to equations and inequalities on the number line.</li> <li>Create the graph, table, and equation for a linear relationship (<math>y = kx</math> or <math>y = x \pm c</math>) and make connections between the representations.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Target H:</b> <b>Geometry</b>	<ul style="list-style-type: none"> <li>Find areas of quadrilaterals and other polygons that can be decomposed into three or fewer triangles.</li> <li>Find the volume of right rectangular prisms with fractional or mixed number side lengths.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Targets I and J:</b> <b>Statistics and Probability</b>	<ul style="list-style-type: none"> <li>Identify a reasonable center and spread for a given context and understand how this relates to the overall shape of the data distribution.</li> <li>Understand that a measure of center summarizes all of its values with a single number.</li> <li>Summarize or display data in box plots.</li> <li>Find the interquartile range.</li> <li>Use range and measures of center to describe the shape of the data distribution as it relates to a familiar context.</li> <li>Pose statistical questions.</li> </ul>
<b>PROBLEM SOLVING &amp; MODELING AND DATA ANALYSIS</b>	<ul style="list-style-type: none"> <li>Use appropriate tools to accurately solve problems arising in everyday life, society, and the workplace.</li> <li>Apply mathematics to solve problems by identifying important quantities and mapping their relationship and by stating and using logical assumptions.</li> </ul>
<b>COMMUNICATING REASONING</b>	<ul style="list-style-type: none"> <li>Use stated assumptions, definitions, and previously established results and examples to identify and repair a flawed argument.</li> <li>Use previous information to support his or her own reasoning on a routine problem.</li> </ul>



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The student who just enters Level 4 should be able to:	
<b>CONCEPTS AND PROCEDURES</b> <b>Target A:</b> <b>Ratios and Proportional Relationships</b>	<ul style="list-style-type: none"> <li>• Solve unfamiliar or multi-step problems by finding the whole, given a part and the percent.</li> <li>• Understand and explain ratio relationships between any two number quantities.</li> <li>• Identify relationships between models or representations.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Targets B and C:</b> <b>The Number System</b>	<ul style="list-style-type: none"> <li>• Use visual models in settings where smaller fractions are divided by larger fractions.</li> <li>• Understand and apply the fact that a fraction multiplied or divided by 1 in the form of <math>\frac{a}{a}</math> is equivalent to the original fraction.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Target D:</b> <b>The Number System</b>	N/A
<b>CONCEPTS AND PROCEDURES</b> <b>Targets E, F, and G:</b> <b>Expressions and Equations</b>	<ul style="list-style-type: none"> <li>• Using the properties of operations, show why two expressions are equivalent.</li> <li>• Solve equations and inequalities of the form <math>x + p = \frac{a}{b}</math> or <math>px = \frac{a}{b}</math>, where <math>p</math> and <math>q</math> are rational numbers.</li> <li>• Create the graph, table, and equation for nonlinear polynomial relationships, making connections between the representations.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Target H:</b> <b>Geometry</b>	<ul style="list-style-type: none"> <li>• Solve problems by finding surface areas of triangular or rectangular prisms and triangular or rectangular pyramids.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Targets I and J:</b> <b>Statistics and Probability</b>	<ul style="list-style-type: none"> <li>• Predict effects on mean and median given a change in data points.</li> <li>• Complete a data set with given measures (e.g., mean, median, mode, interquartile range).</li> </ul>
<b>PROBLEM SOLVING &amp; MODELING AND DATA ANALYSIS</b>	<ul style="list-style-type: none"> <li>• Analyze and interpret the context of an unfamiliar situation for problems of increasing complexity.</li> <li>• Begin to solve problems optimally.</li> <li>• Construct multiple plausible solutions and approaches.</li> </ul>
<b>COMMUNICATING REASONING</b>	<ul style="list-style-type: none"> <li>• Begin to construct chains of logic about abstract concepts autonomously.</li> </ul>

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The student who just enters Level 2 should be able to:	
<b>CONCEPTS AND PROCEDURES</b> <b>Target A:</b> <b>Ratios and Proportional Relationships</b>	<ul style="list-style-type: none"> <li>Identify proportional relationships presented in equation formats and find unit rates involving whole numbers.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Target B:</b> <b>The Number System</b>	<ul style="list-style-type: none"> <li>Convert between familiar fractions and decimals.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Targets C and D:</b> <b>Expressions and Equations</b>	<ul style="list-style-type: none"> <li>Apply properties of operations to expand linear expressions with integer coefficients.</li> <li>Solve multi-step problems with decimal numbers.</li> <li>Solve equations in the form of <math>px + q = r</math>, where <math>p</math>, <math>q</math>, and <math>r</math> are decimal numbers.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Targets E and F:</b> <b>Geometry</b>	<ul style="list-style-type: none"> <li>Describe geometric shapes with given conditions.</li> <li>Use vertical angles expressed as numerical measurements to solve problems.</li> <li>Calculate the area of a circle when the formula is provided and the area of quadrilaterals.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Targets G, H, and I:</b> <b>Statistics and Probability</b>	<ul style="list-style-type: none"> <li>Determine whether or not a sample is random.</li> <li>Find the range of a set of data about a given population.</li> <li>Approximate the probability of a chance event by collecting data.</li> </ul>
<b>PROBLEM SOLVING &amp; MODELING AND DATA ANALYSIS</b>	<ul style="list-style-type: none"> <li>Select tools to solve a familiar and moderately scaffolded problem and apply them with partial accuracy.</li> <li>Use the necessary elements given in a problem situation to solve a problem.</li> <li>Apply mathematics to propose solutions by identifying important quantities and by locating missing information from relevant external resources.</li> </ul>
<b>COMMUNICATING REASONING</b>	<ul style="list-style-type: none"> <li>Find and identify the flaw in an argument.</li> </ul>

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The student who just enters Level 3 should be able to:	
<b>CONCEPTS AND PROCEDURES</b> <b>Target A:</b> <b>Ratios and Proportional Relationships</b>	<ul style="list-style-type: none"> <li>• Represent proportional relationships in graphs and tables and solve one-step rate-related problems.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Target B:</b> <b>The Number System</b>	<ul style="list-style-type: none"> <li>• Solve mathematical problems using addition, subtraction, and multiplication on rational numbers.</li> <li>• Understand that <math>(-1)(-1) = 1</math>.</li> <li>• Convert common fractions and fractions with denominators that are a factor of a power of 10 to decimals.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Targets C and D:</b> <b>Expressions and Equations</b>	<ul style="list-style-type: none"> <li>• Add, subtract, and factor linear expressions with decimal coefficients.</li> <li>• Graph the solution set to a given inequality in the form of <math>x &gt; p</math> or <math>x &lt; p</math>, where <math>p</math> is a rational number.</li> <li>• Understand that rewriting an expression can shed light on how quantities are related in a familiar problem-solving context with a moderate degree of scaffolding.</li> <li>• Use variables to reason with quantities in real-world and mathematical situations with a high degree of scaffolding.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Targets E and F:</b> <b>Geometry</b>	<ul style="list-style-type: none"> <li>• Create a scale drawing of a given figure when a scale factor is given.</li> <li>• Determine the surface area of a right prism.</li> <li>• Use vertical angles expressed as variables to solve two-step problems.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Targets G, H, and I:</b> <b>Statistics and Probability</b>	<ul style="list-style-type: none"> <li>• Use random sampling to draw inferences about a population in familiar contexts.</li> <li>• Informally assess the degree of visual overlap of two numerical data distributions.</li> <li>• Calculate the theoretical probability of a compound event.</li> </ul>
<b>PROBLEM SOLVING &amp; MODELING AND DATA ANALYSIS</b>	<ul style="list-style-type: none"> <li>• Use appropriate tools to accurately solve problems arising in everyday life, society, and the workplace.</li> <li>• Apply mathematics to solve problems by identifying important quantities and mapping their relationship and by stating and using logical assumptions.</li> </ul>
<b>COMMUNICATING REASONING</b>	<ul style="list-style-type: none"> <li>• Use stated assumptions, definitions, and previously established results and examples to identify and repair a flawed argument.</li> <li>• Use previous information to support his or her own reasoning on a routine problem.</li> </ul>

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The student who just enters Level 4 should be able to:	
<b>CONCEPTS AND PROCEDURES</b> Target A: Ratios and Proportional Relationships	<ul style="list-style-type: none"> <li>Solve real-world problems involving proportional relationships that require one step with measurement conversions.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> Target B: The Number System	<ul style="list-style-type: none"> <li>Solve real-world problems with integers and proper fractions, using addition, multiplication, subtraction, and division.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> Targets C and D: Expressions and Equations	<ul style="list-style-type: none"> <li>Construct inequalities with two variables to solve problems.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> Targets E and F: Geometry	<ul style="list-style-type: none"> <li>Describe the two-dimensional figures that result from slicing spheres and cones.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> Targets G, H, and I: Statistics and Probability	<ul style="list-style-type: none"> <li>Generate multiple samples (or simulated samples) of the same size.</li> <li>Determine which measures of variability should be used to draw informal comparative inferences about two populations.</li> <li>Construct a simulation experiment and generate frequencies for compound events.</li> </ul>
<b>PROBLEM SOLVING &amp; MODELING AND DATA ANALYSIS</b>	<ul style="list-style-type: none"> <li>Analyze and interpret the context of an unfamiliar situation for problems of increasing complexity.</li> <li>Begin to solve problems optimally.</li> <li>Construct multiple plausible solutions and approaches.</li> </ul>
<b>COMMUNICATING REASONING</b>	<ul style="list-style-type: none"> <li>Begin to construct chains of logic about abstract concepts autonomously.</li> </ul>

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The student who just enters Level 2 should be able to:	
<b>CONCEPTS AND PROCEDURES</b> Target A: The Number System	<ul style="list-style-type: none"> <li>Identify numbers as rational or irrational.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> Targets B, C, and D: Expressions and Equations	<ul style="list-style-type: none"> <li>Find the cube of one-digit numbers and the cube root of perfect cubes (less than 1,000).</li> <li>Use appropriate tools (e.g., calculator, pencil and paper) to translate large numbers from scientific to standard notation.</li> <li>Identify the y-intercept and calculate the slope of a line from an equation or graph.</li> <li>Graph a system of linear equations and identify the solution as the point of intersection.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> Targets E and F: Functions	<ul style="list-style-type: none"> <li>Identify whether an input/output pair satisfies a function.</li> <li>Compare properties of two linear functions represented in the same way (algebraically, graphically, or in a table).</li> <li>Construct a table to represent a linear relationship between two quantities.</li> <li>Qualitatively describe a graph of a linear function.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> Targets G and H: Geometry	<ul style="list-style-type: none"> <li>Construct reflections across an axis and translations of figures in a coordinate plane.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> Target I: Geometry	<ul style="list-style-type: none"> <li>Identify the appropriate formula for the volume of a cylinder and connect the key dimensions to the appropriate location in the formula.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> Target J: Statistics and Probability	<ul style="list-style-type: none"> <li>Identify what a linear pattern looks like from a given scatter plot.</li> </ul>
<b>PROBLEM SOLVING &amp; MODELING AND DATA ANALYSIS</b>	<ul style="list-style-type: none"> <li>Select tools to solve a familiar and moderately scaffolded problem and apply them with partial accuracy.</li> <li>Use the necessary elements given in a problem situation to solve a problem.</li> <li>Apply mathematics to propose solutions by identifying important quantities and by locating missing information from relevant external resources.</li> </ul>
<b>COMMUNICATING REASONING</b>	<ul style="list-style-type: none"> <li>Find and identify the flaw in an argument.</li> </ul>

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The student who just enters Level 3 should be able to:	
<b>CONCEPTS AND PROCEDURES</b> Target A: The Number System	<ul style="list-style-type: none"> <li>• Convert from fractions to repeating decimals.</li> <li>• Use rational approximations of familiar irrational numbers to make numerical comparisons.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> Targets B, C, and D: Expressions and Equations	<ul style="list-style-type: none"> <li>• Solve simple quadratic monomial equations and represent the solution as a square root.</li> <li>• Work with and perform operations with scientific notation of large numbers.</li> <li>• Identify unit rate of change in linear relationships (i.e., slope is the rate of change).</li> <li>• Solve linear equations with rational number coefficients, including equations whose solutions require expanding expressions using the distributive property and collecting like terms and equations with infinitely many solutions or no solution.</li> <li>• Solve a system of linear equations with integer coefficients using an algebraic strategy.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> Targets E and F: Functions	<ul style="list-style-type: none"> <li>• Classify functions as linear or nonlinear on the basis of the algebraic representation.</li> <li>• Determine the rate of change and the initial value of a function.</li> <li>• Know linear equations of the form <math>y = mx + b</math> are functions.</li> <li>• Compare properties of two linear functions represented in different ways (algebraically, graphically, or in a table).</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> Targets G and H: Geometry	<ul style="list-style-type: none"> <li>• Predict the location of point P after a transformation.</li> <li>• Know that sequences of translations, rotations, and reflections on a figure always result in a congruent figure.</li> <li>• Construct rotations of figures in a coordinate plane.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> Target I: Geometry	<ul style="list-style-type: none"> <li>• Calculate the volume of a cylinder in direct and familiar mathematical and real-world problems.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> Target J: Statistics and Probability	<ul style="list-style-type: none"> <li>• Describe outliers for a given scatter plot.</li> </ul>
<b>PROBLEM SOLVING &amp; MODELING AND DATA ANALYSIS</b>	<ul style="list-style-type: none"> <li>• Use appropriate tools to accurately solve problems arising in everyday life, society, and the workplace.</li> <li>• Apply mathematics to solve problems by identifying important quantities and mapping their relationship and by stating and using logical assumptions.</li> </ul>
<b>COMMUNICATING REASONING</b>	<ul style="list-style-type: none"> <li>• Use stated assumptions, definitions, and previously established results and examples to identify and repair a flawed argument.</li> <li>• Use previous information to support his or her own reasoning on a routine problem.</li> </ul>

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The student who just enters Level 4 should be able to:	
<b>CONCEPTS AND PROCEDURES</b> Target A: The Number System	<ul style="list-style-type: none"> <li>Approximate irrational numbers between two integers to a specified level of precision.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> Targets B, C, and D: Expressions and Equations	<ul style="list-style-type: none"> <li>Write a system of two linear equations with two variables to represent a context.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> Targets E and F: Functions	<ul style="list-style-type: none"> <li>Interpret the rate of change and initial value of a linear function in terms of its graph.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> Targets G and H: Geometry	<ul style="list-style-type: none"> <li>Describe the impact of two transformations, including a dilation, on a figure.</li> <li>Identify or draw the relevant right triangle in a three-dimensional figure, given coordinates or a diagram.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> Target I: Geometry	<ul style="list-style-type: none"> <li>Solve unfamiliar or multi-step problems involving volumes of cylinders.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> Target J: Statistics and Probability	<ul style="list-style-type: none"> <li>Use the trend line or line of best fit to make predictions in real-world situations.</li> </ul>
<b>PROBLEM SOLVING &amp; MODELING AND DATA ANALYSIS</b>	<ul style="list-style-type: none"> <li>Analyze and interpret the context of an unfamiliar situation for problems of increasing complexity.</li> <li>Begin to solve problems optimally.</li> <li>Construct multiple plausible solutions and approaches.</li> </ul>
<b>COMMUNICATING REASONING</b>	<ul style="list-style-type: none"> <li>Begin to construct chains of logic about abstract concepts autonomously.</li> </ul>

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**DECEMBER 18, 2014**  
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**Grade 11 Mathematics**

The student who just enters Level 2 should be able to:	
<b>CONCEPTS AND PROCEDURES</b> <b>Targets A and B:</b> <b>Number and Quantity</b>	<ul style="list-style-type: none"> <li>• Extend the properties of integer exponents to multiply expressions with rational exponents that have common denominators.</li> <li>• Perform operations on rational numbers and familiar irrational numbers.</li> <li>• Understand that rational numbers are closed under addition and multiplication.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Target C:</b> <b>Quantities</b>	<ul style="list-style-type: none"> <li>• Choose and interpret the correct units in a formula given in a familiar context, including making measurement conversions between simple units.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Targets D, E, F, G, H, I, and J:</b> <b>Algebra</b>	<ul style="list-style-type: none"> <li>• Use linear equations in one and two variables and inequalities in one variable to model a familiar situation and to solve a familiar problem.</li> <li>• Explain solution steps for solving linear equations and solve a simple radical equation.</li> <li>• Use properties of exponents to expand a single variable (coefficient of 1) repeated up to two times with a nonnegative integer exponent into an equivalent form and vice versa, e.g., <math>x^2x^3 = xxxx = x^{2+3}</math>.</li> <li>• Solve one-step linear equations and inequalities in one variable and understand the solution steps as a process of reasoning.</li> <li>• Represent linear equations and quadratic equations with integer coefficients in one and two variables graphically on a coordinate plane.</li> <li>• Recognize equivalent forms of linear expressions and write a quadratic expression with integer-leading coefficients in an equivalent form by factoring.</li> <li>• Add multi-variable polynomials made up of monomials of degree 2 or less.</li> <li>• Graph and estimate the solution of systems of linear equations.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Targets K, L, M, and N:</b> <b>Functions</b>	<ul style="list-style-type: none"> <li>• Understand the concept of a function in order to distinguish a relation as a function or not a function.</li> <li>• Interpret quadratic functions in context, and given the key features of a graph, the student should be able to identify the appropriate graph.</li> <li>• Graph quadratic functions by hand or by using technology.</li> <li>• Identify properties of two linear or two quadratic functions.</li> <li>• Understand equivalent forms of linear and quadratic functions.</li> <li>• Build an explicit function to describe or model a relationship between two quantities.</li> <li>• Add, subtract, and multiply linear functions.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Target O:</b> <b>Similarity, Right Triangles, and Trigonometry</b>	<ul style="list-style-type: none"> <li>• Use the Pythagorean Theorem in unfamiliar problems to solve for the missing side in a right triangle with some scaffolding.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Target P:</b> <b>Statistics and Probability</b>	<ul style="list-style-type: none"> <li>• Describe the differences in shape, center, and spread of two or more different data sets representing familiar contexts.</li> </ul>



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<b>PROBLEM SOLVING &amp; MODELING AND DATA ANALYSIS</b>	<ul style="list-style-type: none"> <li>• Select tools to solve a familiar and moderately scaffolded problem and apply them with partial accuracy.</li> <li>• Use the necessary elements given in a problem situation to solve a problem.</li> <li>• Apply mathematics to propose solutions by identifying important quantities and by locating missing information from relevant external resources.</li> </ul>
<b>COMMUNICATING REASONING</b>	<ul style="list-style-type: none"> <li>• Find and identify the flaw in an argument.</li> </ul>
<b>The student who just enters Level 3 should be able to:</b>	
<b>CONCEPTS AND PROCEDURES Targets A and B: Number and Quantity</b>	<ul style="list-style-type: none"> <li>• Apply all laws of exponents on expressions with exponents that have common denominators.</li> <li>• Rewrite expressions with rational exponents of the form <math>(m/n)</math> to radical form and vice versa.</li> <li>• Use repeated reasoning to recognize that the sums and products of a rational number and a nonzero irrational number are irrational.</li> </ul>
<b>CONCEPTS AND PROCEDURES Target C: Quantities</b>	<ul style="list-style-type: none"> <li>• Reason quantitatively to choose and interpret the units in a formula given in an unfamiliar context, including making compound measurement conversions.</li> <li>• Define appropriate quantities or measurements in familiar contexts with some scaffolding to construct a model.</li> <li>• Choose the scale and origin of a graph or data display.</li> </ul>
<b>CONCEPTS AND PROCEDURES Targets D, E, F, G, H, I, and J: Algebra</b>	<ul style="list-style-type: none"> <li>• Create and use quadratic inequalities in two variables to model a situation and to solve a problem.</li> <li>• Write a quadratic expression in one variable with rational coefficients in an equivalent form by factoring, identify its zeroes, and explain the solution steps as a process of reasoning.</li> <li>• Use properties of exponents to write equivalent forms of exponential functions with one or more variables with integer coefficients with nonnegative integer exponents involving operations of addition, subtraction, and multiplication without requiring distribution of an exponent across parentheses.</li> <li>• Solve a quadratic equation with integer roots in standard form.</li> <li>• Represent polynomial and exponential functions graphically and estimate the solution of systems of equations displayed graphically.</li> <li>• Understand that the plotted line, curve, or region represents the solution set to an equation or inequality.</li> <li>• Add and subtract multi-variable polynomials of any degree and understand that polynomials are closed under subtraction.</li> </ul>
<b>CONCEPTS AND PROCEDURES Targets K, L, M, and N: Functions</b>	<ul style="list-style-type: none"> <li>• Identify the domain and range of linear, quadratic, and exponential functions presented in any form.</li> <li>• Use function notation to evaluate a function for numerical or monomial inputs.</li> <li>• Appropriately graph and interpret key features of linear, quadratic, and exponential functions in familiar or scaffolded contexts and specify the average rate of change of a function on a given domain from its equation or approximate the average rate of change of a function from its graph.</li> <li>• Graph linear, quadratic, logarithmic, and exponential functions by hand and by using technology.</li> </ul>

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	<ul style="list-style-type: none"> <li>Analyze and compare properties of a linear function to properties of another function of any type.</li> <li>Build a recursive function to describe or model a relationship between two quantities.</li> <li>Divide linear functions.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Target O:</b> <b>Similarity, Right Triangles, and Trigonometry</b>	<ul style="list-style-type: none"> <li>Use trigonometric ratios and the sine and cosine of complementary angles to find missing angles or sides of a given right triangle with minimal scaffolding.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Target P:</b> <b>Statistics and Probability</b>	<ul style="list-style-type: none"> <li>Select the appropriate choice of spread as interquartile range or standard deviation based on the selection of the measure of center.</li> </ul>
<b>PROBLEM SOLVING &amp; MODELING AND DATA ANALYSIS</b>	<ul style="list-style-type: none"> <li>Use appropriate tools to accurately solve problems arising in everyday life, society, and the workplace.</li> <li>Apply mathematics to solve problems by identifying important quantities and mapping their relationship and by stating and using logical assumptions.</li> </ul>
<b>COMMUNICATING REASONING</b>	<ul style="list-style-type: none"> <li>Use stated assumptions, definitions, and previously established results and examples to identify and repair a flawed argument.</li> <li>Use previous information to support his or her own reasoning on a routine problem.</li> </ul>
<b>The student who just enters Level 4 should be able to:</b>	
<b>CONCEPTS AND PROCEDURES</b> <b>Targets A and B:</b> <b>Number and Quantity</b>	<ul style="list-style-type: none"> <li>Explain the relationship between properties of integer exponents and properties of rational exponents.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Target C:</b> <b>Quantities</b>	<ul style="list-style-type: none"> <li>Define appropriate quantities or measurements in unfamiliar contexts with some scaffolding to construct a model.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Targets D, E, F, G, H, I, and J:</b> <b>Algebra</b>	<ul style="list-style-type: none"> <li>Choose an appropriate equivalent form of an expression in order to reveal a property of interest when solving problems.</li> <li>Solve a formula for any variable in the formula.</li> <li>Provide an example that would lead to an extraneous solution when solving linear, quadratic, radical, and rational equations.</li> <li>Use a variety of methods such as factoring, completing the square, quadratic formula, etc., to solve equations and to find minimum and maximum values of quadratic equations.</li> </ul>

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Grade 11 Mathematics**

<b>CONCEPTS AND PROCEDURES</b> <b>Targets K, L, M, and N: Functions</b>	<ul style="list-style-type: none"> <li>Find the input of a function when given the function in function notation and the output, or find the output when given the input.</li> <li>Describe complex features such as holes, symmetries, and end behavior of the graph of a function.</li> <li>Graph functions both by hand and by using technology.</li> </ul>
<b>Target O: Similarity, Right Triangles, and Trigonometry</b>	<ul style="list-style-type: none"> <li>Solve right triangle problems with multiple stages and in compound figures without scaffolding.</li> </ul>
<b>CONCEPTS AND PROCEDURES</b> <b>Target P: Statistics and Probability</b>	<ul style="list-style-type: none"> <li>Interpret data to explain why a data value is an outlier.</li> </ul>
<b>PROBLEM SOLVING &amp; MODELING AND DATA ANALYSIS</b>	<ul style="list-style-type: none"> <li>Analyze and interpret the context of an unfamiliar situation for problems of increasing complexity.</li> <li>Begin to solve problems optimally.</li> <li>Construct multiple plausible solutions and approaches</li> </ul>
<b>COMMUNICATING REASONING</b>	<ul style="list-style-type: none"> <li>Begin to construct chains of logic about abstract concepts autonomously.</li> </ul>

# Smarter Balanced Achievement Level Setting



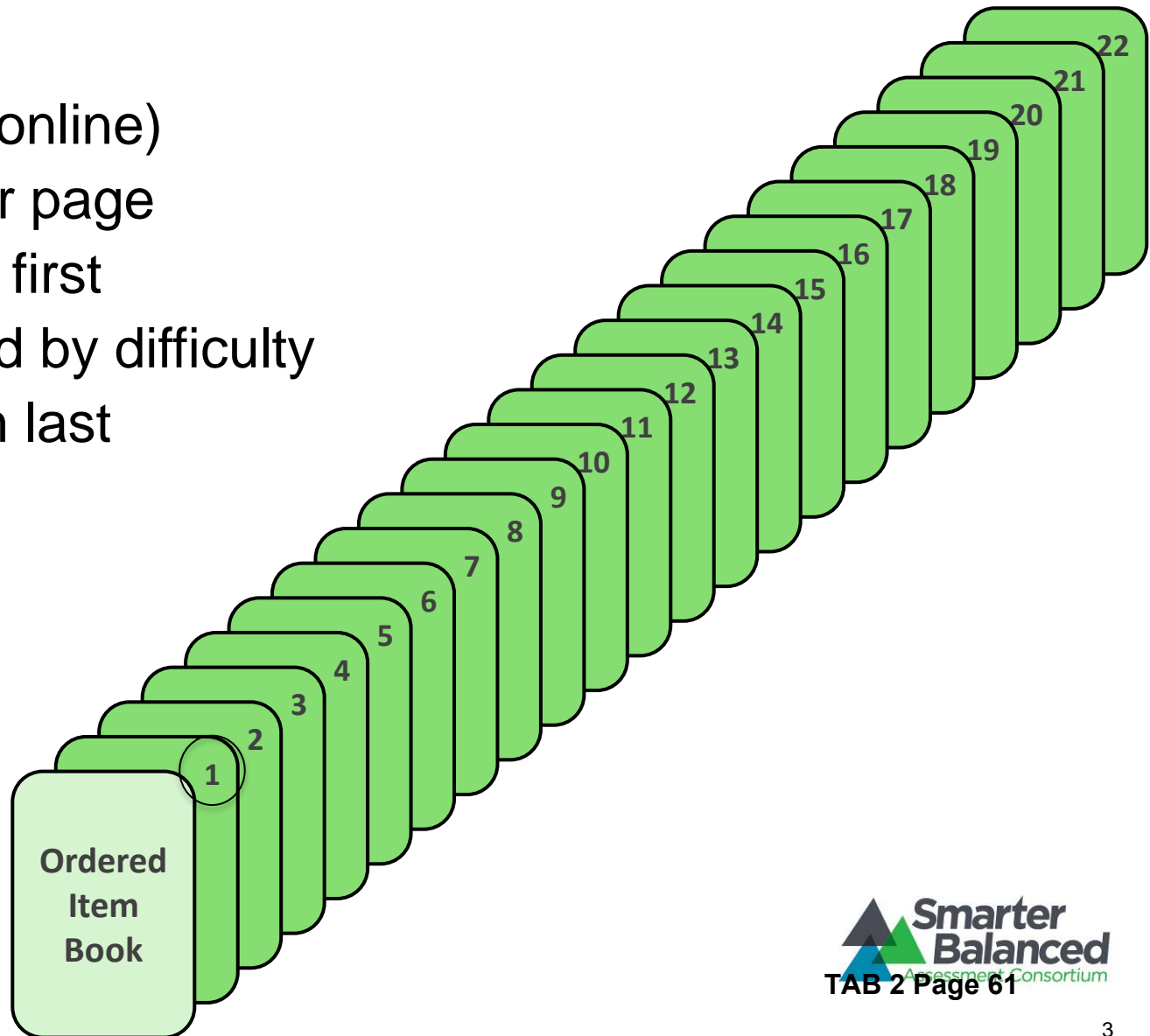
Dallas, TX, October 2014

# Developing the Expertise to Make Content-Based Achievement Level Recommendations

- Day 1 Activities that must be completed before panelists are qualified to set achievement levels using the Bookmark Procedure:
  - Study content standards
  - Study achievement level descriptors
  - Understand what the tests measure
    - Take practice test
    - Study ordered item booklets using item maps

# Ordered Item Books (OIBs)

- Virtual OIB (online)
- One item per page
- Easiest item first
- Items ascend by difficulty
- Hardest item last



## Item Map for Booklet: Achievement Level Setting



### English Language Arts/Literacy, 4

Round: 1

Review each question in the ordered item booklet by clicking on the page number below, starting with page 1.

 View Selected



Page	Claim and Target	Depth of Knowledge	Bookmark	Comments	Reviewed	
1	Claim: 2-W,Target: 8-4 	1 			<input type="checkbox"/>	
2	Claim: 2-W,Target: 9-4 	1 			<input type="checkbox"/>	
3	Claim: 3-L,Target: 4-4 	1 			<input type="checkbox"/>	
4	Claim: 2-W,Target: 1-4 	2 			<input type="checkbox"/>	
5	Claim: 3-L,Target: 4-4 	2 			<input type="checkbox"/>	
6	Claim: 2-W,Target: 2-4 	4 			<input type="checkbox"/>	
7	Claim: 3-L,Target: 4-4 	2 			<input type="checkbox"/>	
8	Claim: 2-W,Target: 8-4 	1 			<input type="checkbox"/>	
9	Claim: 1-LT,Target: 3-4 	2 			<input type="checkbox"/>	
10	Claim: 2-W,Target: 9-4 	1 			<input type="checkbox"/>	
11	Claim: 3-L,Target: 4-4 	2 			<input type="checkbox"/>	
12	Claim: 1-LT,Target: 7-4 	2 			<input type="checkbox"/>	
<sup>12</sup> <b>SDE</b>	Claim: 2-W,Target: 3-4 	2 			<input type="checkbox"/>	<b>TAB 2 Page 62</b>

## Item Map for Booklet: Achievement Level Setting

### English Language Arts/Literacy, 4

Round: 1

Review each question in the ordered item booklet by clicking on the page number below, starting with page 1.

 View Selected



Page	Claim and Target	Depth of Knowledge	Bookmark	Comments	Reviewed	
1	Claim: 2-W,Target: 8-4	 1 			<input type="checkbox"/>	
2	Claim: 2-W,Target: 9-4				<input type="checkbox"/>	
3	Claim: 3-L,Target: 4-4				<input type="checkbox"/>	
4	Claim: 2-W,Target: 1-4				<input type="checkbox"/>	
5	Claim: 3-L,Target: 4-4				<input type="checkbox"/>	
6	Claim: 2-W,Target: 2-4				<input type="checkbox"/>	
7	Claim: 3-L,Target: 4-4	 2 			<input type="checkbox"/>	
8	Claim: 2-W,Target: 8-4	 1 			<input type="checkbox"/>	
9	Claim: 1-LT,Target: 3-4	 2 			<input type="checkbox"/>	
10	Claim: 2-W,Target: 9-4	 1 			<input type="checkbox"/>	
11	Claim: 3-L,Target: 4-4	 2 			<input type="checkbox"/>	
12	Claim: 1-LT,Target: 7-4	 2 			<input type="checkbox"/>	
13 <b>SDE</b>	Claim: 2-W,Target: 3-4	 2 			<input type="checkbox"/>	<b>TAB 2 Page 63</b>



## Item Map for Booklet: Achievement Level Setting

### English Language Arts/Literacy, 4

Round: 1

Review each question in the ordered item booklet by clicking on the page number below, starting with page 1.

 View Selected



Page	Claim and Target	Depth of Knowledge	Bookmark	Comments	Reviewed	
1	Claim: 2-W,Target: 8-4	1			<input type="checkbox"/>	
2	Claim: 2-W,Target: 9-4	1				
3	Claim: 3-L,Target: 4-4	1				
4	Claim: 2-W,Target: 1-4	2				
5	Claim: 3-L,Target: 4-4	2				
6	Claim: 2-W,Target: 2-4	4				
7	Claim: 3-L,Target: 4-4	2				
8	Claim: 2-W,Target: 8-4	1				
9	Claim: 1-LT,Target: 3-4	2				
10	Claim: 2-W,Target: 9-4	1			<input type="checkbox"/>	
11	Claim: 3-L,Target: 4-4	2			<input type="checkbox"/>	
12	Claim: 1-LT,Target: 7-4	2			<input type="checkbox"/>	
13 <b>SDE</b>	Claim: 2-W,Target: 3-4	2			<input type="checkbox"/>	

Requires the recall of information, such as a fact, definition, term, or a simple procedure. Level 1 only requires students to demonstrate a rote response, use a well-known formula, follow a set procedure (like a recipe), or perform a clearly defined series of steps. A "simple" procedure is well defined and typically involves only one step. Some examples that represent, but do not constitute all of Level 1 performance are: (a) Recall or recognize a fact, term, or property. (b) Represent in words or diagrams a scientific concept or relationship. (c) Provide or recognize a standard scientific representation for simple phenomenon. (d) Perform a routine procedure, such as measuring length.

**TAB 2 Page 64**

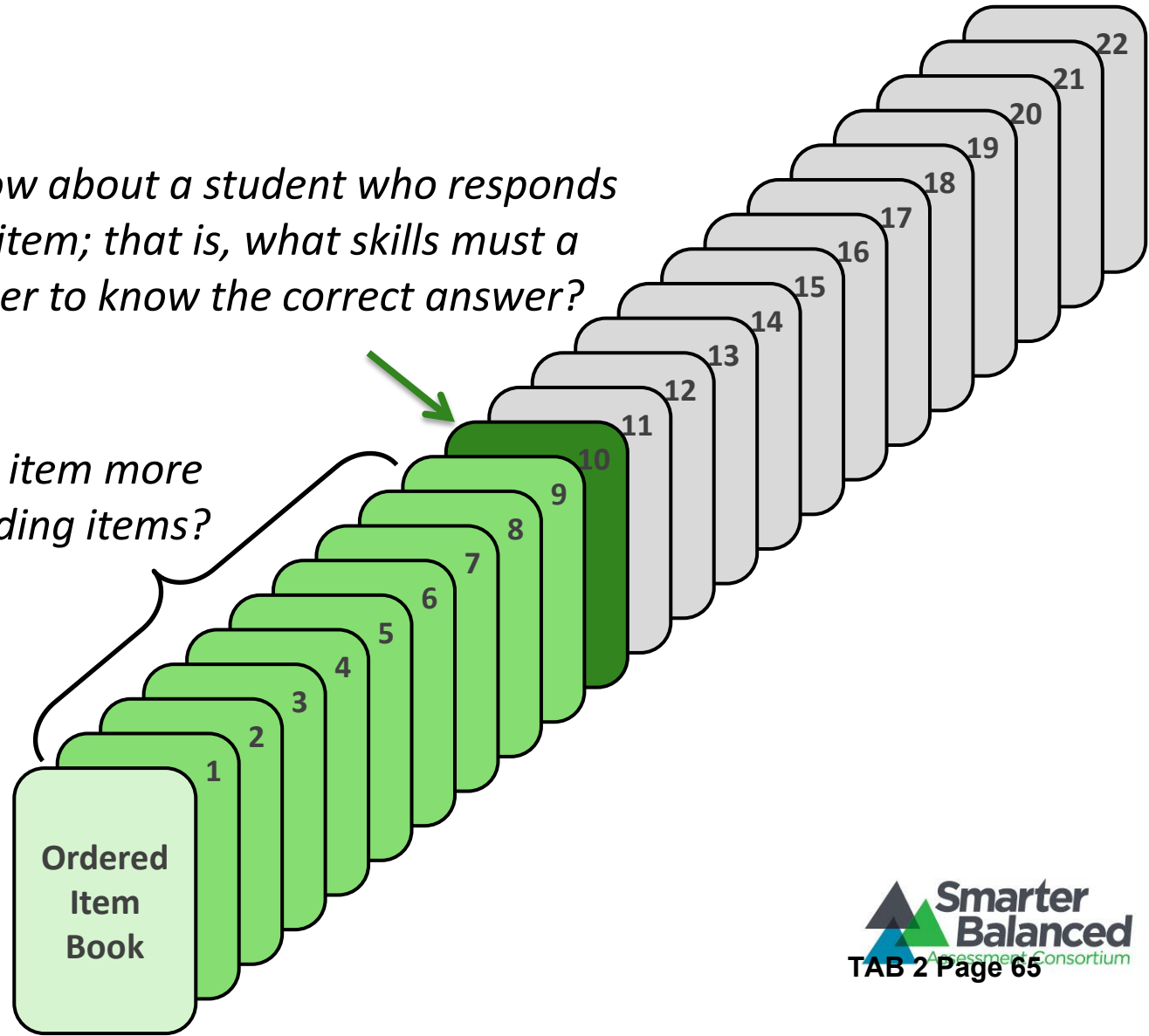
As you study each item in the OIB, discuss two questions with your fellow panelists:

*1. What do you know about a student who responds successfully to this item; that is, what skills must a student have in order to know the correct answer?*

*2. What makes this item more difficult than preceding items?*

*This activity helps you acquire the knowledge to make content-based cut score recommendations.*

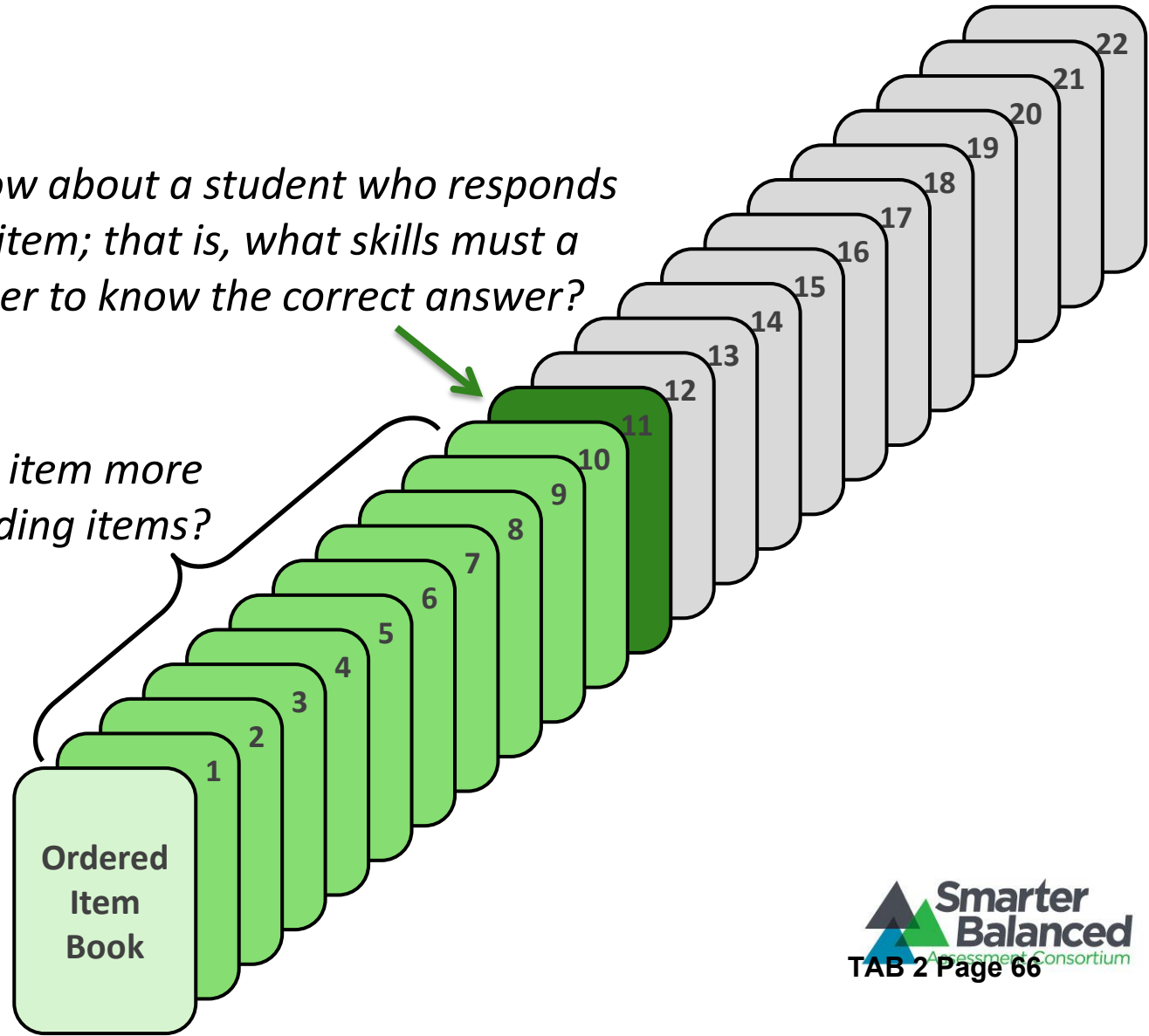
SDE



As you study each item in the OIB, discuss two questions with your fellow panelists:

1. *What do you know about a student who responds successfully to this item; that is, what skills must a student have in order to know the correct answer?*

2. *What makes this item more difficult than preceding items?*



## Item Map for Booklet: Achievement Level Setting
























### English Language Arts/Literacy, 4

Round: 1

Review each question in the ordered item booklet by clicking on the page number below, starting with page 1.

 View Selected



Page	Claim and Target	Depth of Knowledge	Bookmark	Comments	Reviewed	
1	Claim: 2-W,Target: 8-4 	1 			<input type="checkbox"/>	
2	Claim: 2-W,Target: 9-4 	1 			<input type="checkbox"/>	
3	Claim: 3-L,Target: 4-4 	1 			<input type="checkbox"/>	
4	Claim: 2-W,Target: 1-4 	2 			<input type="checkbox"/>	
5	Claim: 3-L,Target: 4-4 	2 			<input type="checkbox"/>	
6	Claim: 2-W,Target: 2-4 	4 			<input type="checkbox"/>	
7	Claim: 3-L,Target: 4-4 	2 			<input type="checkbox"/>	
8	Claim: 2-W,Target: 8-4 	1 			<input type="checkbox"/>	
9	Claim: 1-LT,Target: 3-4 	2 			<input type="checkbox"/>	
10	Claim: 2-W,Target: 9-4 	1 			<input type="checkbox"/>	
11	Claim: 3-L,Target: 4-4 	2 			<input type="checkbox"/>	
12	Claim: 1-LT,Target: 7-4 	2 			<input type="checkbox"/>	
13	Claim: 2-W,Target: 3-4 	2 			<input type="checkbox"/>	TAB 2 Page 67

SDE

# Ordered Item Booklet: Achievement Level Setting

English Language Arts/Literacy, 4

Page: 02

[Back to Item Map](#)

Item	Question Information	Passages and Other Materials 0	Achievement Level Descriptors 1
	Page	02	
	Location	330	
	Claim and Target	Claim: 2-W, Target: 9-4	
	Depth of Knowledge	1	
	Answer Key	B	

[Back to Item Map](#)

## Item Map for Booklet: Achievement Level Setting
























### English Language Arts/Literacy, 4

Round: 1

Review each question in the ordered item booklet by clicking on the page number below, starting with page 1.

 View Selected



Page	Claim and Target	Depth of Knowledge	Bookmark	Comments	Reviewed	
60	Claim: 4-CR,Target: 4-4 	3 			<input type="checkbox"/>	
61	Claim: 4-CR,Target: 2-4 	3 			<input type="checkbox"/>	
62	Claim: 3-L,Target: 4-4 	3 			<input type="checkbox"/>	
63	Claim: 1-IT,Target: 11-4 	3 			<input type="checkbox"/>	
64	Claim: 3-L,Target: 4-4 	3 			<input type="checkbox"/>	
65	Claim: 2-W,Target: 2-4 	4 			<input type="checkbox"/>	
66	Claim: 2-W,Target: 8-4 	<div>  Claim: 2-W WRITING   Target: 8-4 LANGUAGE &amp; VOCABULARY USE         </div>			<input type="checkbox"/>	
	Claim: 1-IT,Target: 8-4 				<input type="checkbox"/>	
	Claim: 1-IT,Target: 8-4 				<input type="checkbox"/>	
	Claim: 3-L,Target: 4-4 				<input type="checkbox"/>	
	Claim: 1-LT,Target: 1-4 				<input type="checkbox"/>	
	Claim: 3-L,Target: 4-4 	3 			<input type="checkbox"/>	
72	Claim: 4-CR,Target: 4-4 	3 			<input type="checkbox"/>	

## Item Map for Booklet: Achievement Level Setting



























### English Language Arts/Literacy, 4

Round: 1

Review each question in the ordered item booklet by clicking on the page number below, starting with page 1.

 View Selected



Page	Claim and Target		Depth of Knowledge		Bookmark	Comments	Reviewed	
60	Claim: 4-CR,Target: 4-4		3				<input type="checkbox"/>	
61	Claim: 4-CR,Target: 2-4		3				<input type="checkbox"/>	
62	Claim: 3-L,Target: 4-4		3				<input type="checkbox"/>	
63	Claim: 1-IT,Target: 11-4		3				<input type="checkbox"/>	
64	Claim: 3-L,Target: 4-4		3				<input type="checkbox"/>	
65	Claim: 2-W,Target: 2-4		4				<input type="checkbox"/>	
66	Claim: 2-W,Target: 8-4		2				<input type="checkbox"/>	
67	Claim: 1-IT,Target: 8-4		2				<input type="checkbox"/>	
68	Claim: 1-IT,Target: 8-4		1				<input type="checkbox"/>	
69	Claim: 3-L,Target: 4-4		3				<input type="checkbox"/>	
70	Claim: 1-LT,Target: 1-4		2				<input type="checkbox"/>	
71	Claim: 3-L,Target: 4-4		3				<input type="checkbox"/>	
72	Claim: 4-CR,Target: 4-4		3				<input type="checkbox"/>	



SDE

TAB 2 Page 70

# Passages and Other Materials

## Ordered Item Booklet: Achievement Level Setting

English Language Arts/Literacy, 4

Page: 72

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[<< Previous](#)

[Next >>](#)

Item

Question Information

Passages and Other Materials 3

Achievement Level Descriptors 1

57202



Item deleted to maintain test security



# Grade Content Area Room Set Up



Research  
Facilitator

Content  
Facilitator

One Table Facilitator at each table



# The Bookmark Procedure



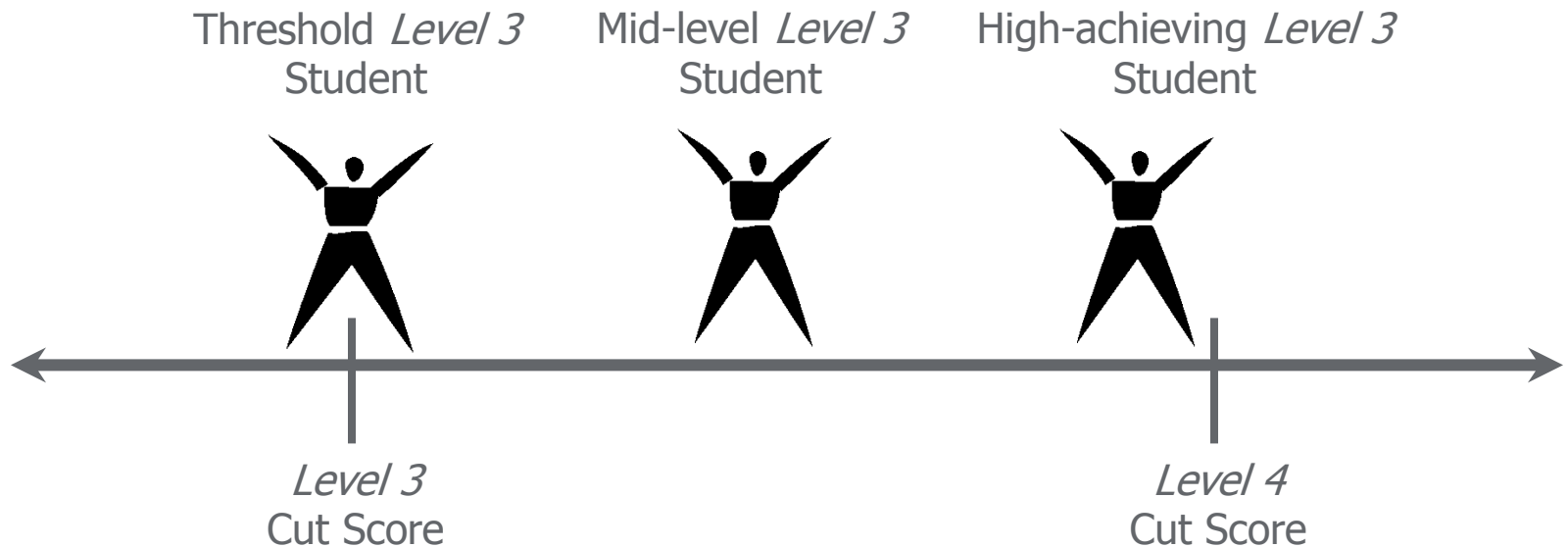
Smarter Balanced Achievement Level Setting  
Dallas, TX, October 2014

# Bookmark Overview

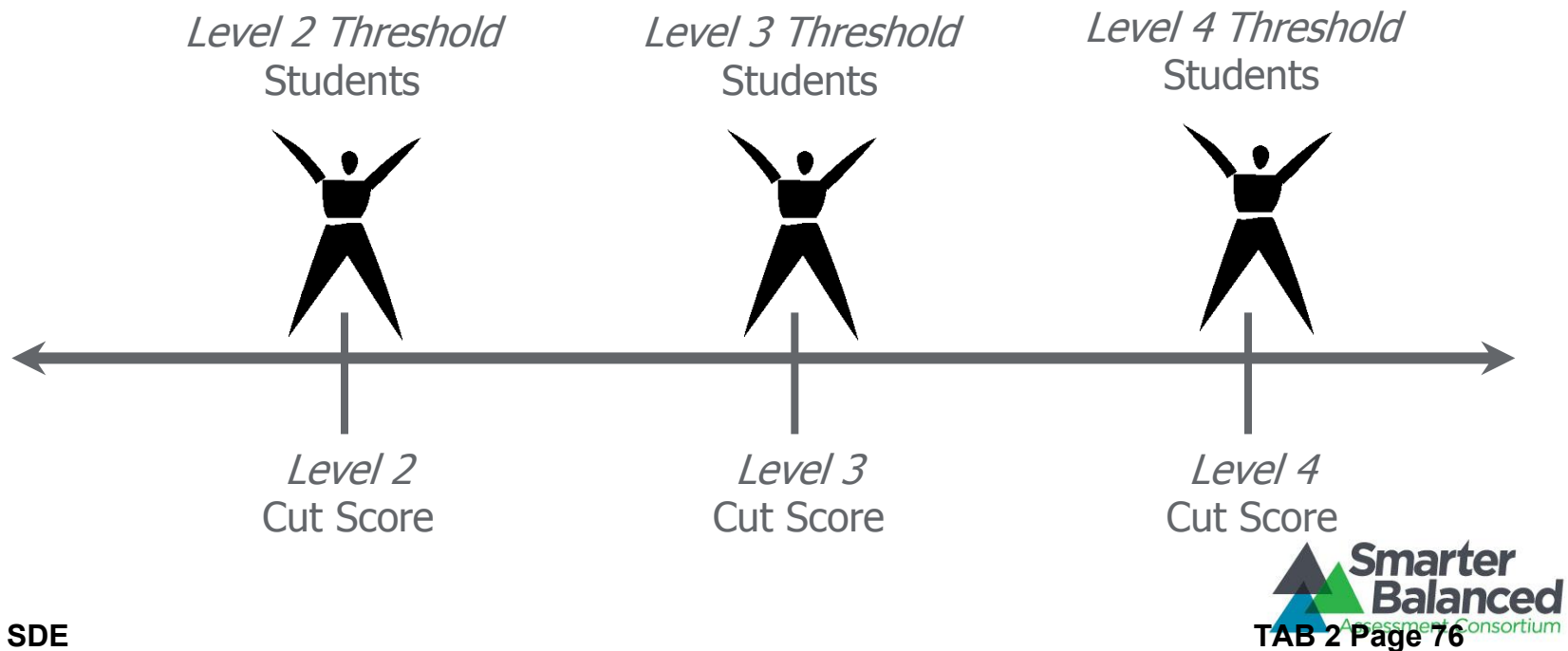
- The Bookmark Procedure is a process used to set cut scores that define achievement levels by comparing and aligning items and content to achievement level descriptors
- It is so named because you place bookmarks in an ordered item booklet of test items to make your cut score recommendations

# Threshold Student

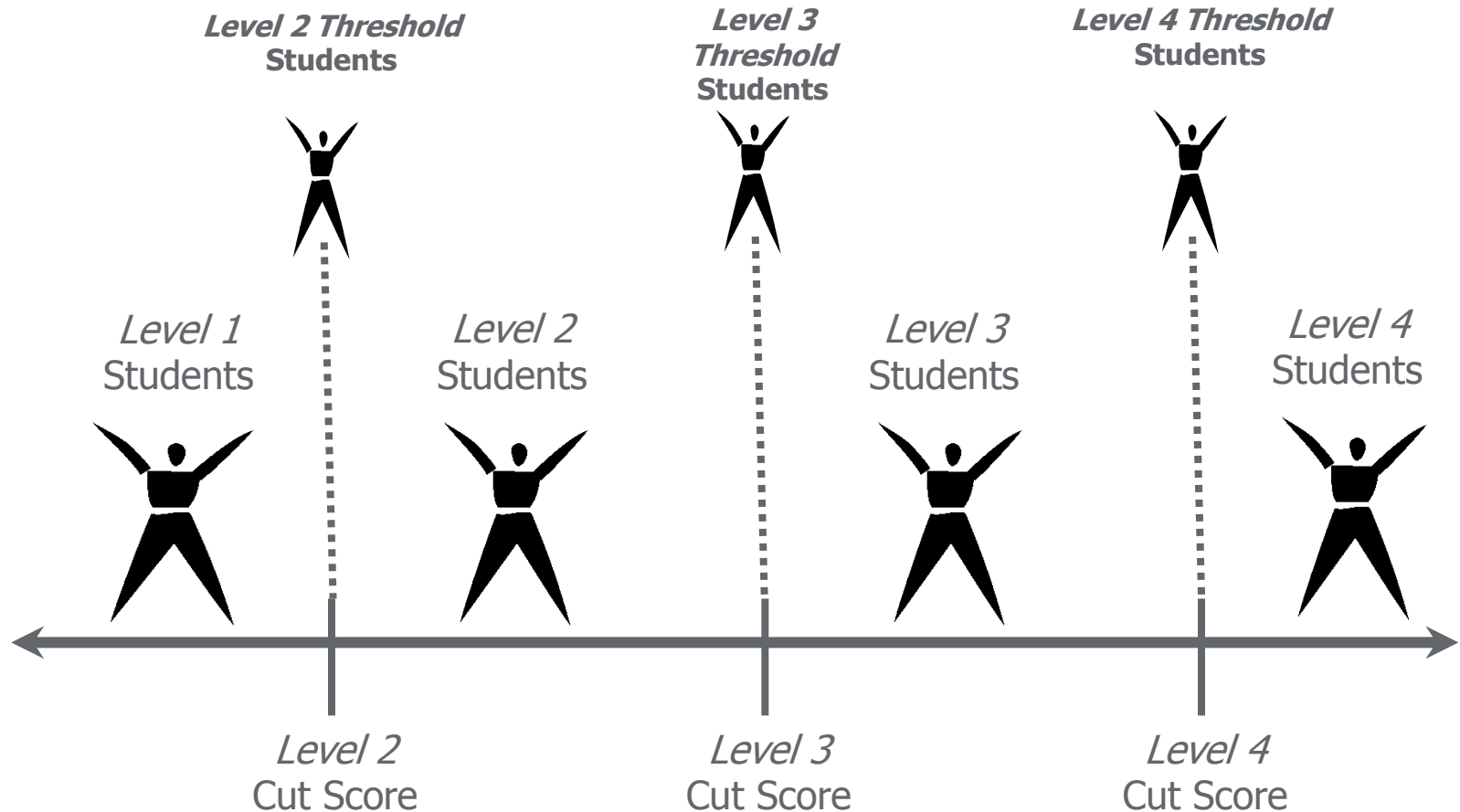
- We recommend cut scores for Threshold Students—the students with a level of achievement that just barely qualifies them to be in the achievement level
  - These are the skills of the student just entering the achievement level



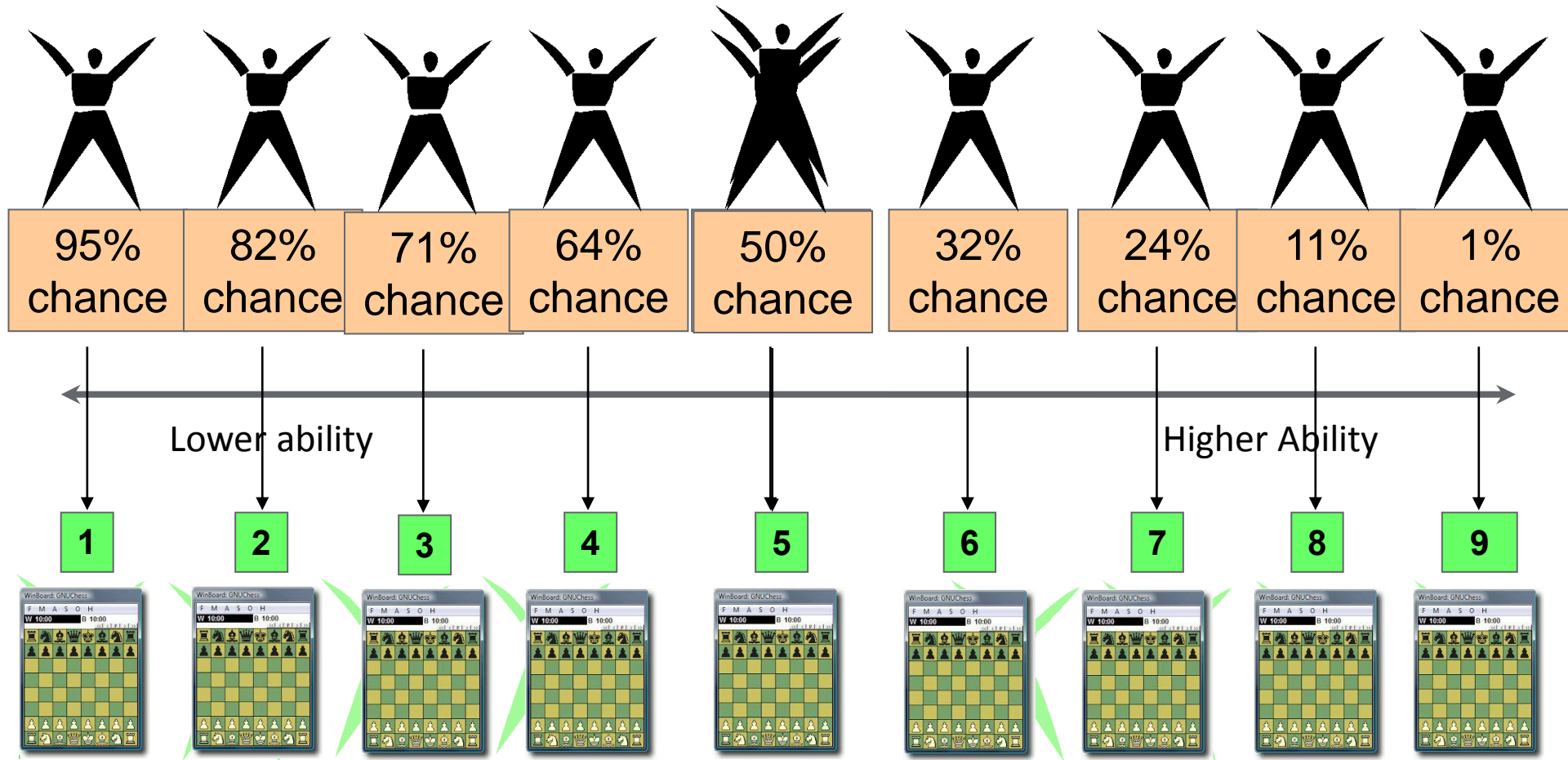
# Three Threshold Students



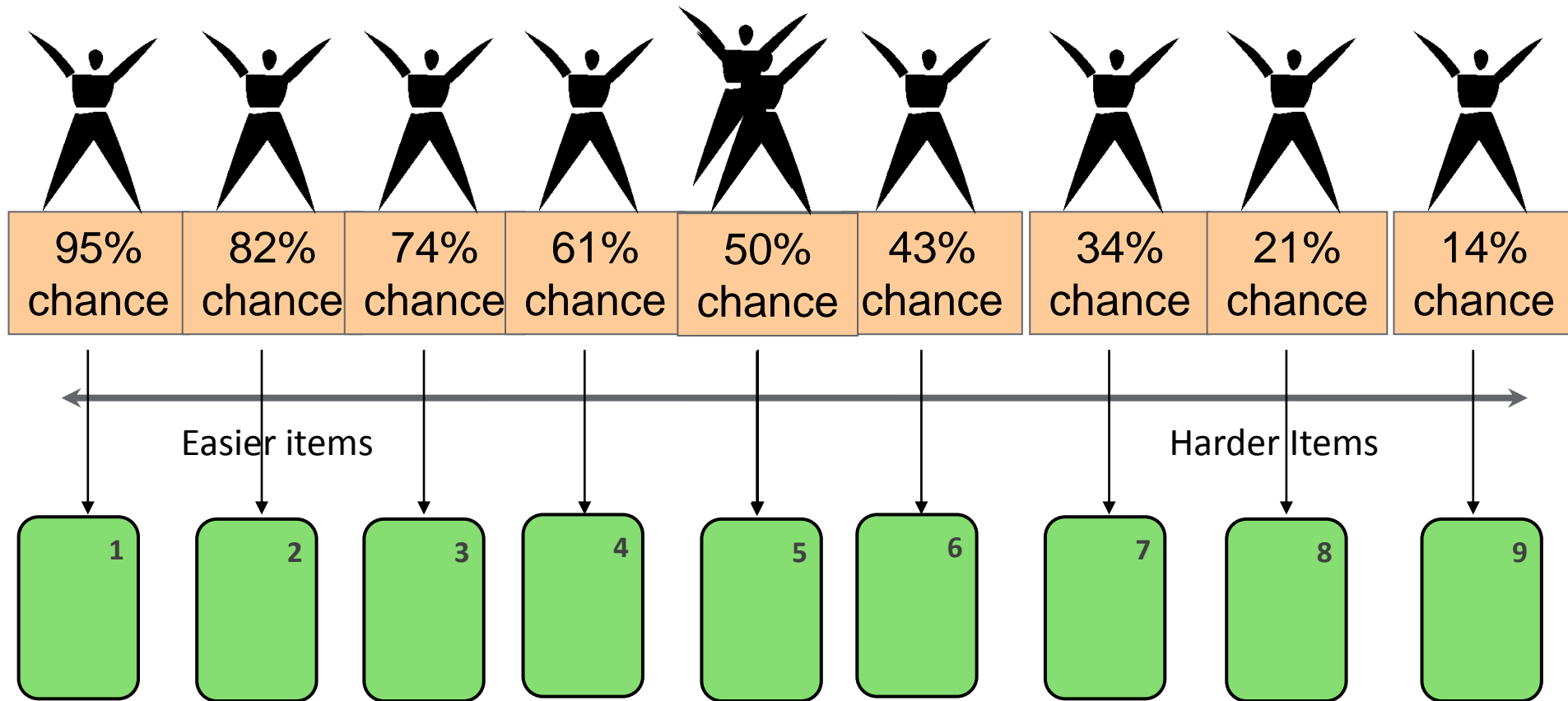
# Three Cut Scores Define Four Achievement Levels



# Locating a Chess Player on a Scale

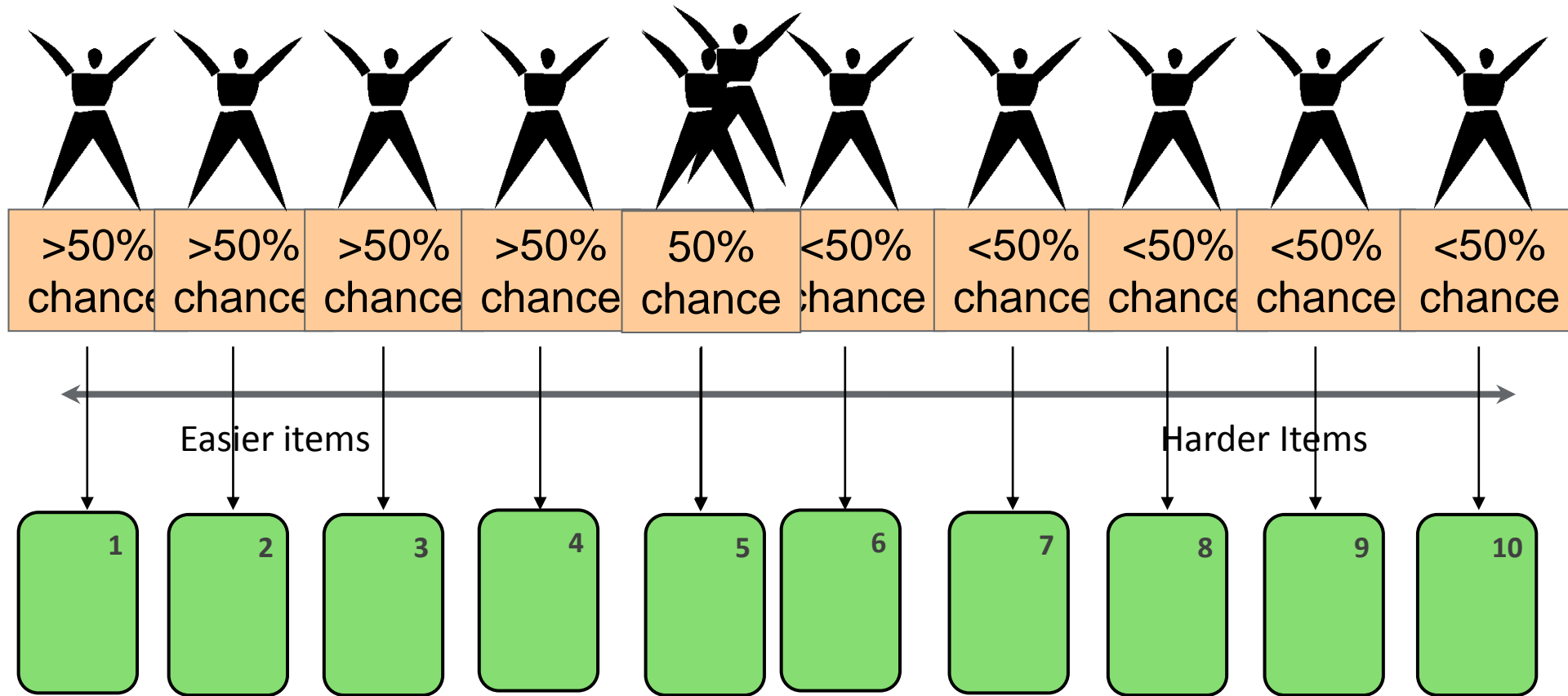


# Locating the Threshold Student on the Scale





# Locating the Threshold Student on the Scale

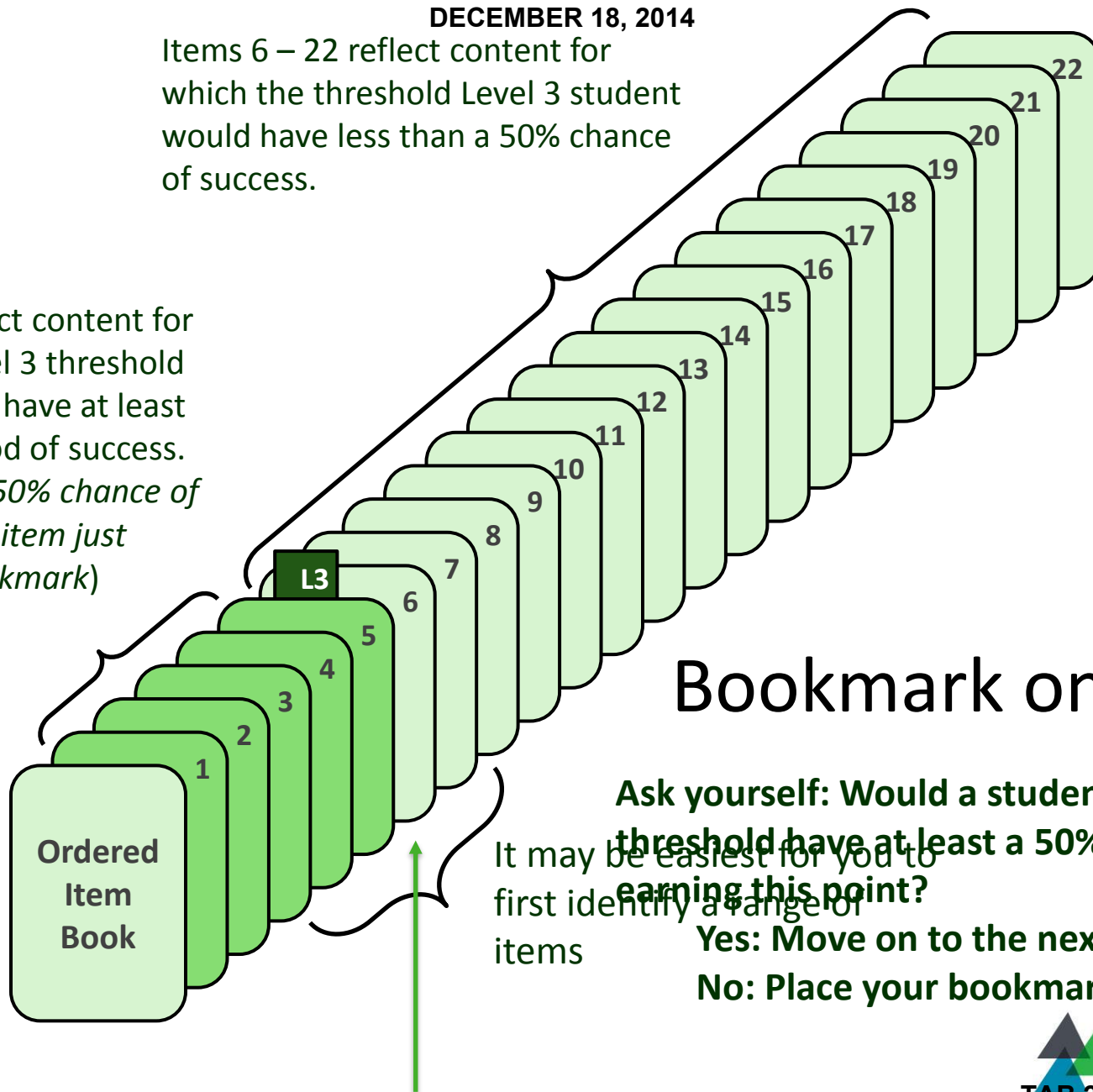


# Bookmark Placement Instructions

- Ask yourself: Would a student at the threshold have at least a 50% chance of earning this point?
  - Yes: Move on to the next item.
  - No: Place your bookmark here.

Items 6 – 22 reflect content for which the threshold Level 3 student would have less than a 50% chance of success.

Items 1-5 reflect content for which the Level 3 threshold student would have at least a 50% likelihood of success. (with about a 50% chance of success on the item just before the bookmark)

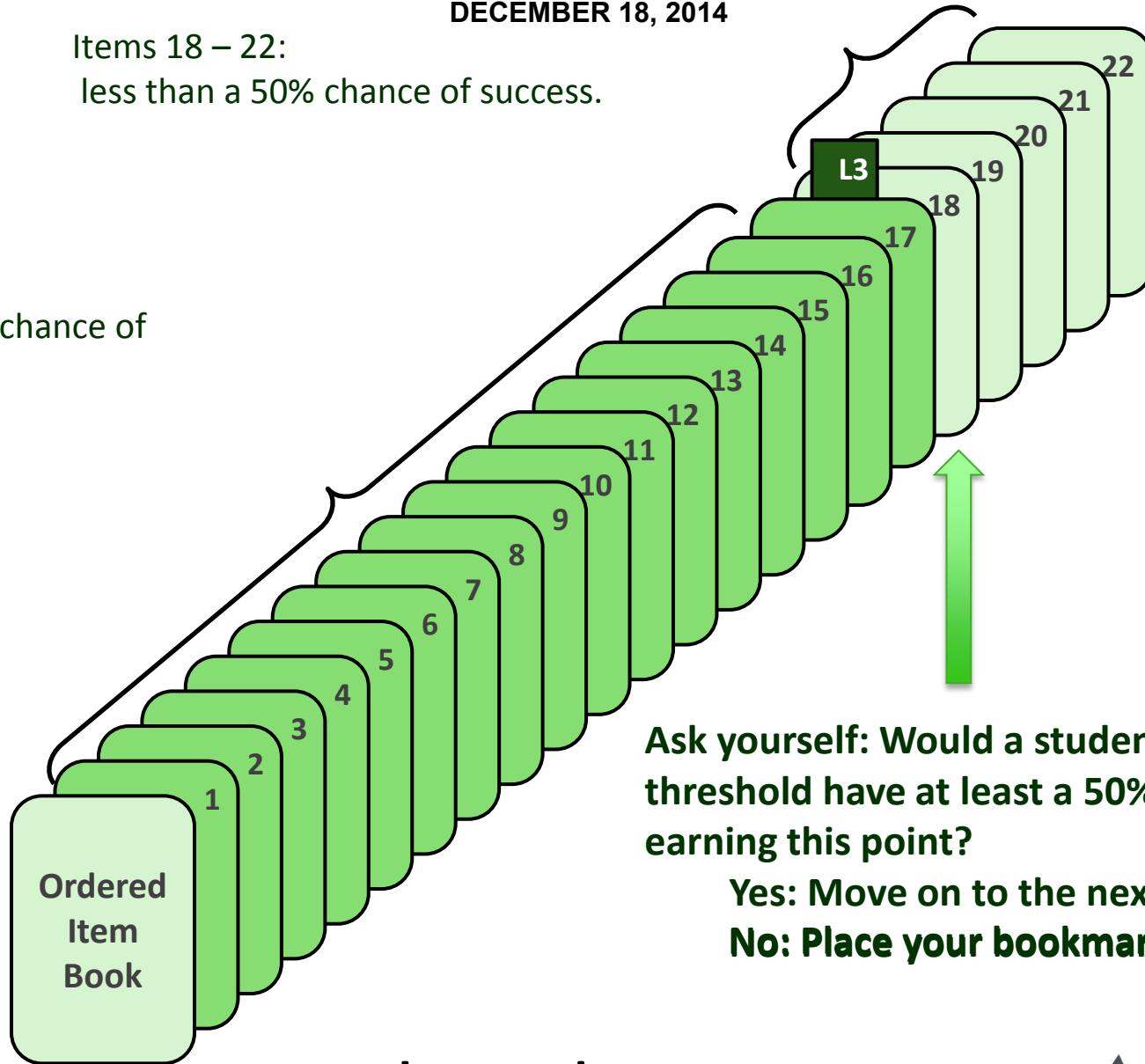


# Level 3 Bookmark Placement

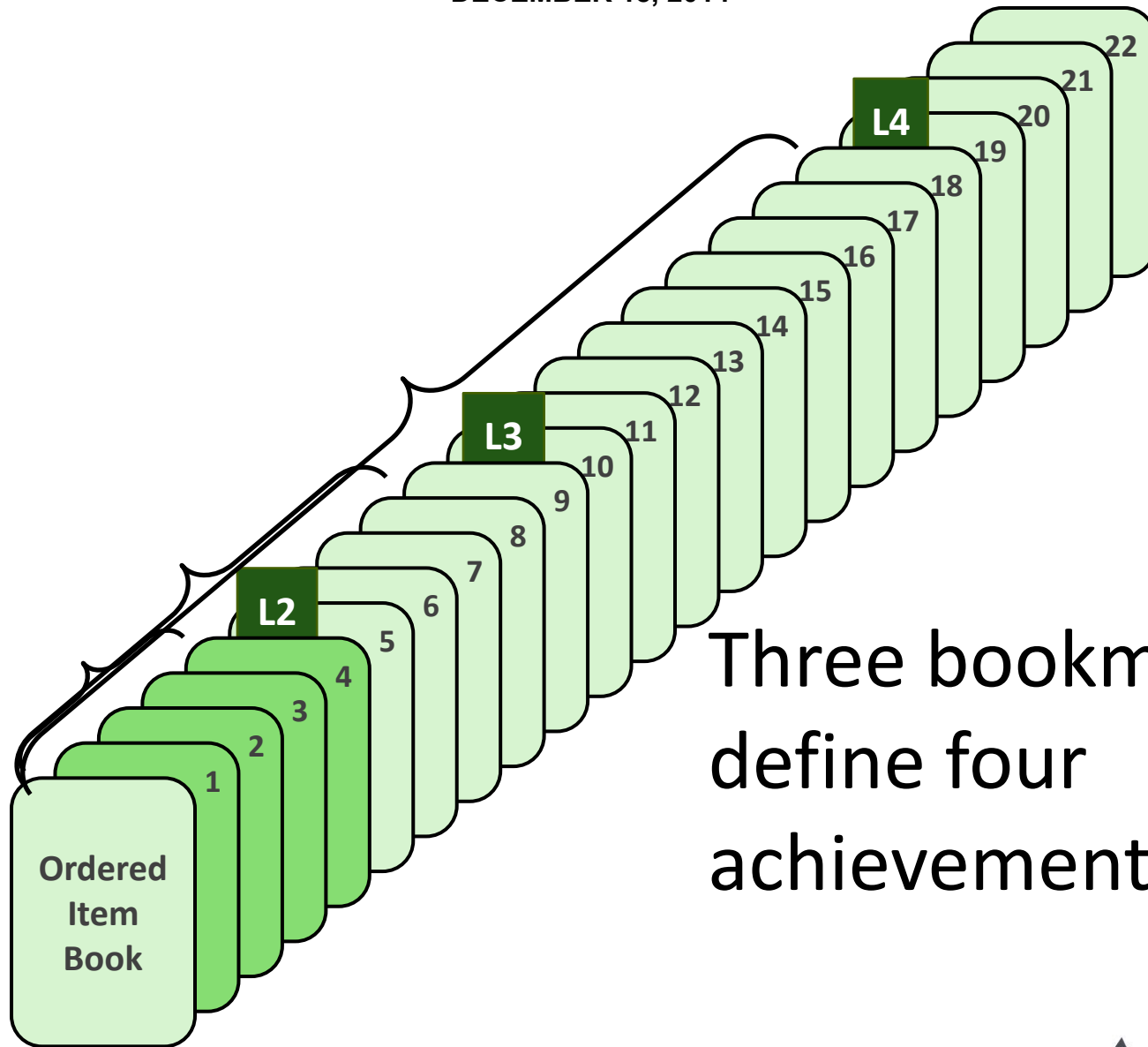
- When you place your Level 3 bookmark, think about a student at the threshold of Level 3 based on the achievement level descriptors
  - Place your Level 3 bookmark at the point in the OIB such that
  - A threshold Level 3 student would have at least a 50% likelihood of success on each of the items before the bookmark (and about a 50% chance of success on the item just before the bookmark)
  - A threshold Level 3 student would have less than a 50% likelihood of success on the items from the bookmark on
  - It may be easiest for you to first identify a range of items that begins where threshold Level 3 students begin to be challenged and end where they would definitely be challenged. Then pick the best page in that range.

Items 18 – 22:  
less than a 50% chance of success.

Items 1-17:  
At least 50% chance of  
success



Bookmark on Page 18



Three bookmarks  
define four  
achievement levels.

# Setting Bookmarks

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In-Person Panel for Achievement Level Setting



Instructions

Reference Materials 17

Booklets 2

Hello 111111!

Log off

## Item Map for Booklet: Achievement

### English Language Arts/Literacy, 4

Round: 1

Review each question in the ordered item booklet by clicking on the page number.

View Selected



Page	Claim and Target	Depth of Knowledge	Bookmark	Comments	Reviewed	
1	Claim: 2-W, Target: 8-4	1			<input type="checkbox"/>	
2	Claim: 2-W, Target: 9-4	1			<input type="checkbox"/>	
3	NAEP				<input type="checkbox"/>	
4	Claim: 2-W, Target: 1-4	2			<input type="checkbox"/>	
5	Claim: 3-L, Target: 4-4	2			<input type="checkbox"/>	
6	Claim: 2-W, Target: 2-4	4			<input checked="" type="checkbox"/>	
7	Claim: 3-L, Target: 4-4	2			<input type="checkbox"/>	
8	Claim: 2-W, Target: 8-4	1			<input type="checkbox"/>	
9	Claim: 1-LT, Target: 3-4	2			<input type="checkbox"/>	
10	Claim: 2-W, Target: 9-4	1			<input type="checkbox"/>	
11	Claim: 3-L, Target: 4-4	2			<input type="checkbox"/>	
12	Claim: 1-LT, Target: 7-4	2			<input type="checkbox"/>	
13	Claim: 2-W, Target: 3-4	2			<input type="checkbox"/>	

#### Set Bookmark

Select a bookmark value and click "Set Bookmark" below to set a bookmark at the selected Location value. Click "Cancel" to return.

- ☒ Level 2
- ☐ Level 3
- ☐ Level 4

Set Bookmark

Cancel

Enter Comment

Set Bookmark

# Agenda

## Day 1

- Morning: Study CCSS and ALDs
- Afternoon: Study the Ordered Item Booklet

## Day 2

- Morning: Bookmark training and Round 1
  - Make bookmark recommendations individually
- Afternoon: Round 2
  - Discuss differences in Round 1 bookmark placements at each table
  - Place Round 2 bookmarks individually

## Day 3

- Morning: Round 3
  - Discuss Round 2 bookmark placements for the entire room (all panelists at all tables)
  - View supporting data based on Round 2 bookmarks (e.g., impact data, online panel results)
  - Place Round 3 bookmarks individually
  - Review final recommendations
  - Evaluate the process



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Idaho In-Person Panelists 10-24-2014

First Name	Last Name	Panel Grade	Panel Subject	Panelist State	Panelist Role	*VAC/TBL	Email Address
Marie	Hammon	3	ELA	ID	Educator: General	VAC	mhammon@sveidaho.com
Crystal	Tibbals	5	ELA	ID	Educator: General		ctibbals@troysd287.org
Pauli	Connelley	4	Math	ID	Educator: General		pauli.connelley@jeromeschools.org
Danielle	Desjarlais	6	Math	ID	Educator: General		d-desjarlais@nsd131.org
Chris	Wadley	6	ELA	ID	Educator: General	TBL	cwadley@sd288.k12.id.us
Monique	Jensen	5	Math	ID	Educator: Non-Teaching		mjensen@parmaschools.org
Tina	Polishchuk	8	Math	ID	Educator: General	VAC	tpolishchuk@caldwellschools.org
Tatia	Totorica	11	Math	ID	Educator: General	VAC	tatia.totorica@boiseschools.org
Margaret	Reeves	5	Math	ID	Educator: General	TBL	mreeves@melbaschools.org
Carla	Adams	7	Math	ID	Educator: General		adams.carla@meridianschools.org
Jill	Schmidt	5	Math	ID	General Public		jschmidt@lewistonschools.net
Shelly	Thiel	8	ELA	ID	Educator: General	TBL	thieshel@d91.k12.id.us
Barney	Brewton	3	Math	ID	Educator: Non-Teaching		bbrewton@sd273.com
Deanna	Richards	4	ELA	ID	Educator: ELL experience		d-richards@isd221.net
Amber	Hatrock	6	ELA	ID	Educator: General		ahatrock@idahova.org
Kimberly	Schafer	8	ELA	ID	Educator: General		schafer.kimberly@meridianschools.org
Tonya	Wilkes	11	Math	ID	Educator: Non-Teaching		wilkesto@sd25.us
Julie	Kinzer	3	ELA	ID	Educator: General		jkinzer@lakeland272.org
Kirk	Trigsted	11	Math	ID	Higher Education		kirk@uidaho.edu
Meagan	Newberry	11	ELA	ID	Higher Education		meagannewberry@cwidaho.cc
TBL indicates Table Leader Participation; VACO indicates Vertical Articulation Committee Participation							
*VAC indicates both Vertical Articulation Committee and Table Leader Participation							

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## In-Person Panel for Achievement Level Setting

Email Text:

**To:** In-Person Panelists  
**CC:** Executive Staff, Nancy Arnold  
**From:** MI\_smarterbalanced21@measinc.com  
**Subject:** In-Person Panelist Resources and Certificate

*This email is being sent on behalf of the Smarter Balanced Assessment Consortium. For questions please email [MI\\_smarterbalanced21@measinc.com](mailto:MI_smarterbalanced21@measinc.com).*

Dear In-Person Panelists:

Thank you for your participation in the Smarter Balanced Achievement Level Setting In-Person Panel. Your time and diligent efforts were critical to this essential task of recommending achievement levels for Smarter Balanced assessments.

We have received many requests for several of the resources that were used in Dallas. Attached you will find the PowerPoint presentation on OIBs and the Bookmark Procedure; a list of links to helpful resources on the Smarter Balanced website; and Threshold Achievement Level Descriptors (ALDs) for all grades and content areas. Please note that the attached ALDs are also available on the Smarter Balanced website; we simply reformatted them for ease of use at the Achievement Level Setting.

Also attached you will find an electronic Certificate of Participation for your involvement in the Achievement Level Setting activities. The certificate is a fillable PDF. Please enter your name, along with the grade and content area of the panel on which you served. Once you have entered your information, please save the PDF and print a copy of the certificate for your files.

If you have any questions, please contact Mandy Hunter at [MI\\_smarterbalanced21@measinc.com](mailto:MI_smarterbalanced21@measinc.com).

Thank you again for your participation!

Attachments:

Smarter Balanced Achievement Level Setting OIB and Bookmark Procedure Presentation  
Smarter Balanced Resource Links  
In-Person Panelist Certificate of Participation  
Threshold Achievement Level Descriptors

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## Smarter Balanced Resource Links

<http://www.smarterbalanced.org/smarter-balanced-assessments>

### Preliminary Test Blueprints

- [ELA/Literacy Smarter Balanced Preliminary Summative Assessment Blueprint – 5/9/14](#) (PDF)
- [Mathematics Smarter Balanced Preliminary Summative Assessment Blueprint – 5/9/14](#) (PDF)
- [Supporting Document: Scoring Reporting and Estimated Testing Times](#) (PDF)

### Content Specifications

- [ELA/Literacy Content Specifications Appendix B: Grade Level Tables for All Claims and Assessment Targets and Item Types](#) (2/4/14 draft)
- [Mathematics Content Specifications](#) (6/2013 draft)

### Item/Task Specifications

#### English Language Arts/Literacy Item Specification

- [ELA CAT Item Specs Grades 3-5](#) (ZIP) (Update 2/4/14)
- [ELA CAT Item Specs Grades 6-8](#) (ZIP) (Update 2/4/14)
- [ELA CAT Item Specs Grades 9-11](#) (ZIP) (Updated 2/4/14)
- [ELA PT Item Specs Opinion Grades 3-5](#) (ZIP) (5/20/14)
- [ELA PT Item Specs Narrative Grades 3-5](#) (ZIP) (5/20/14)
- [ELA PT Item Specs Informative Grades 3-5](#) (ZIP) (5/20/14)
- [ELA PT Item Specs Explanatory Grades 6-8,11](#) (ZIP) (5/20/14)
- [ELA PT Item Specs Argumentative Grades 6-8,11](#) (ZIP) (5/20/14)
- [ELA Stimulus Specifications](#) (PDF)

#### Mathematics

- [Mathematics Grades 3-5](#) (ZIP) (Update 2/4/14)
- [Mathematics Grades 6-8](#) (ZIP) (Update 2/4/14)
- [Mathematics High School](#) (ZIP) (Update 2/4/14)
- [Mathematics PT Item Specs All Grades](#) (PDF) (5/27/14)
- [Smarter Balanced Mathematics General Rubrics](#) (PDF) (DocX)

## Guidelines and Supports

- [Accessibility and Accommodations Guidelines](#) (PDF)
- [Read Aloud Guidelines](#) (PDF)
- [ELA Audio Guidelines](#) (PDF)
  
- [Formulas & Conversions Guidelines](#) (PDF)
- [Calculator Availability by Grade Level](#) (PDF)
- [Mathematics Audio Guidelines](#) (PDF)
- [Scoring Guide for Selected Short-Text Mathematics Items](#) (PDF) New!
- [ELL Guidelines](#) (PDF)
- [Signing Guidelines](#) (PDF)
- [Tactile Accessibility Guidelines](#) (PDF)
- [Bias and Sensitivity Guidelines](#) (PDF)
- [Scribing Protocol](#) (PDF)
- [Resources and Practices Comparison Crosswalk](#) (PDF)
- [Support for Under Represented Students](#) (includes ISAAP information and Assistive Technology typology)

Use this link for the resources below: <http://sbac.portal.airast.org/practice-test/>

- [Calculators](#)
- [Manuals and User Guides](#) (Under Resources and Documentation)
- [Classroom Activities](#) (Under Resources and Documentation)
- [Scoring Guides](#) (Under Resources and Documentation)
- [Performance Task Writing Rubrics](#) (Under Resources and Documentation)

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**SUBJECT**

Proposed Waiver of Requirement in IDAPA 08.02.03.111 – Rules Governing Thoroughness for the 2014-2015 school-year

**REFERENCE**

August 15, 2013	State Board Approval of proposed changes to IDAPA 08.02.03.105.06(d) – graduation requirements for the Class of 2016 allow for the field test waiver to be implemented in Idaho.
November 1, 2013	State Board Approval of Pending Rule Docket No. 08.0203.1306
November 20, 2013	State Board Approval of Idaho's Field Test Flexibility Waiver
January 17, 2014	State Board Approval of proposed changes to IDAPA 08.02.03.111.06(j) and 08.02.03.111.06(k) - waiving grade nine (9) and grade ten (10) field test participation and making it optional for the district.

**APPLICABLE STATUTE, RULE, OR POLICY**

Idaho Administrative Code, IDAPA 08.02.03.111

**BACKGROUND/DISCUSSION**

No Child Left Behind Act of 2002 requires every state to implement high-quality, yearly student academic assessments that are aligned with the state's challenging academic content and achievement standards, at a minimum in mathematics, reading or language arts, and science for grades three (3) through eight (8) and once in high school (No Child Left Behind Act, 2002, §1111(b)(3)).

The current Administrative Rule, IDAPA 08.02.03, requires all students in Idaho public schools, grades kindergarten through twelve (K-12) to participate in and are funded for the comprehensive assessment program (IDAPA 08.02.03.111.04). The comprehensive assessment program for grade nine (9) consists of Idaho Standard Achievement Tests, Idaho Alternate Assessment, and Idaho English Language Assessment (IDAPA 08.02.03.111.06).

During the 2012 and 2013 school years, the Smarter Balanced Assessment Consortium and the National Center and State Collaborative started to develop assessment items and performance tasks in English language arts/literacy and mathematics to be administered in grades three (3) through eight (8) and in high school.



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The Idaho State Board of Education on November 20, 2013 and the United States Department of Education on February 18, 2014 approved a waiver to allow all schools to field test assessments in mathematics and reading/language arts developed by the Smarter Balanced Assessment Consortium and by the National Center and State Collaborative.

On January 17, 2014, the Idaho State Board of Education approved a waiver to allow districts the option of not administering field test assessments in grade nine (9) and ten (10). Districts were still required to field test assessments in grade three (3) through eight (8) and in grade eleven (11) to meet the federal testing requirement. In Spring 2014, approximately 34% of 9<sup>th</sup> graders and 28% of 10<sup>th</sup> graders voluntarily participated in the field tests.

In October 2014, a group of district superintendents and testing coordinators recommended that districts should be allowed to choose not to administer the Idaho Standard Achievement Tests and Idaho Alternate Assessment on grade nine (9) students due to technical and logistical difficulties.

The Department is requesting the Board waive the requirement for the assessments required for grade nine (9) students pursuant to IDAPA 08.02.03.111.06 (j)

**IMPACT**

Waiver of the grade nine (9) assessment requirements will reduce the number of required assessments while still meeting federal compliance requirements. The testing is not required by No Child Left Behind and not administering the test will result in a cost savings.

**ATTACHMENTS**

Attachment 1 – IDAPA 08.02.03.111

Page 3

**BOARD ACTION**

I move to approve the Waiver of Requirement of Idaho Administrative Code, IDAPA 08.02.03.111.06(j), requiring grade nine (9) students take the Idaho Standards Achievement Test, Idaho ALT Assessment Test, and the Idaho English Language Assessment for the 2014-2015 school year, as submitted.

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

**IDAPA 08  
TITLE 02  
CHAPTER 03  
08.02.03 - RULES GOVERNING THOROUGHNESS**

**111. ASSESSMENT IN THE PUBLIC SCHOOLS.**

**01. Philosophy.** Acquiring the basic skills is essential to realization of full educational, vocational and personal/social development. Since Idaho schools are responsible for instruction in the basic scholastic skills, the State Board of Education has a vested interest in regularly surveying student skill acquisition as an index of the effectiveness of the educational program. This information can best be secured through objective assessment of student growth. The State Board of Education will provide oversight for all components of the comprehensive assessment program. (4-2-08)

- 02. Purposes.** The purpose of assessment in the public schools is to: (3-15-02)
- a.** Measure and improve student achievement; (3-15-02)
  - b.** Assist classroom teachers in designing lessons; (3-15-02)
  - c.** Identify areas needing intervention and remediation, and acceleration; (3-15-02)
  - d.** Assist school districts in evaluating local curriculum and instructional practices in order to make needed curriculum adjustments; (3-15-02)
  - e.** Inform parents and guardians of their child's progress; (3-15-02)
  - f.** Provide comparative local, state and national data regarding the achievement of students in essential skill areas; (3-15-02)
  - g.** Identify performance trends in student achievement across grade levels tested and student growth over time; and (3-15-02)
  - h.** Help determine technical assistance/consultation priorities for the State Department of Education. (3-15-02)

**03. Content.** The comprehensive assessment program will consist of multiple assessments, including, the Idaho Reading Indicator (IRI), the National Assessment of Educational Progress (NAEP), the Idaho English Language Assessment, the Idaho Standards Achievement Tests (ISAT), the Idaho Alternate Assessment, and a college entrance exam. (3-29-12)

**04. Testing Population.** All students in Idaho public schools, grades kindergarten through twelve (K-12), are required to participate in the comprehensive assessment program approved by the State Board of Education and funded. (4-2-08)

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**a.** All students who are eligible for special education shall participate in the statewide assessment program. (4-6-05)

**b.** Each student's individualized education program team shall determine whether the student shall participate in the regular assessment without accommodations, the regular assessment with accommodations or adaptations, or whether the student qualifies for and shall participate in the alternate assessment. (4-6-05)

**c.** Limited English Proficient (LEP) students, as defined in Subsection 112.04.d.iv., may receive designated supports and/or accommodations for the ISAT assessment, if need has been indicated by the LEP student's Educational Learning Plan (ELP) team. The team shall outline the designated supports and/or accommodations in an ELP prior to the assessment administration. Designated supports and/or accommodations shall be familiar to the during previous instruction and for other assessments. LEP students who are enrolled in their first year of school in the United States may take the IELA in lieu of the English language arts ISAT, but will still be required to take the ISAT Mathematics and Science). Such LEP students will be counted as participants for the ninety-five percent (95%) participation target, as described in Subsection 112.04. However, such LEP students are not required to be counted for accountability purposes, as described in Subsection 112.03. T (11-24-14)

**05. Scoring and Report Formats.** Scores will be provided for each subject area assessed and reported in standard scores, benchmark scores, or holistic scores. Test results will be presented in a class list report of student scores, building/district summaries, content area criterion reports by skill, disaggregated group reports, and pressure sensitive labels as appropriate. Information about the number of students who are eligible for special education who participate in regular and alternate assessments, and their performance results, shall be included in reports to the public if it is statistically sound to do so and would not disclose performance results identifiable to individual students. (4-7-11)

**a.** Effective April 1, 2009, all students taking the Idaho Standards Achievement Test (ISAT) must have a unique student identifier. (4-7-11)

**b.** Districts must send all assessment results and related communication to parents within three (3) weeks of receipt from the state. (4-7-11)

**06. Comprehensive Assessment Program.** The State approved comprehensive assessment program is outlined in Subsections 111.06.a. through 111.06.l. Each assessment will be comprehensive of and aligned to the Idaho State Content Standards it is intended to assess. In addition, districts are responsible for writing and implementing assessments in those standards not assessed by the state assessment program. (4-2-08)

**a.** Kindergarten - Idaho Reading Indicator, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)

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- b.** Grade 1 - Idaho Reading Indicator, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)
- c.** Grade 2 - Idaho Reading Indicator, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)
- d.** Grade 3 - Idaho Reading Indicator, Grade 3 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)
- e.** Grade 4 - National Assessment of Educational Progress, Grade 4 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (3-29-12)
- f.** Grade 5 - Grade 5 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (3-29-12)
- g.** Grade 6 - Grade 6 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (3-29-12)
- h.** Grade 7 - Grade 7 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (3-29-12)
- i.** Grade 8 - National Assessment of Educational Progress, Grade 8 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (3-29-12)
- j.** Grade 9 - Grade 9 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (3-29-12)
- k.** Grade 10 - High School Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)
- l.** Grade 11 - High School Idaho Standards Achievement Tests (as applicable), Idaho English Language Assessment, college entrance exam. T (11-24-14)
- m.** Grade 12 - National Assessment of Educational Progress, Idaho English Language Assessment . (4-2-08)
- n.** Students are required to take an End of Course Assessment in science provided by the state and administered by the district. T(11-24-14)
- o.** Students who achieve a proficient or advanced score on a portion or portions of the ISAT, or the Idaho Alternate Assessment, offered in their tenth grade year or later are not required to continue taking that portion or portions. T (11-24-14)
- 07. Comprehensive Assessment Program Schedule. (5-3-03)**

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**a.** The Idaho Reading Indicator will be administered in accordance with Section 33-1614, Idaho Code. (3-15-02)

**b.** The National Assessment of Educational Progress will be administered in timeframe specified by the U.S. Department of Education. (3-15-02)

**c.** The Idaho Standards Achievement Tests will be administered in the Spring in a time period specified by the State Board of Education. T(11-24-14)

**d.** The Idaho Alternate Assessment will be administered in a time period specified by the State Board of Education. (4-2-08)

**e.** The Idaho English Language Assessment will be administered in a time period specified by the State Board of Education. (4-2-08)

**08. Costs Paid by the State.** Costs for the following testing activities will be paid by the state: (4-1-97)

**a.** All consumable and non-consumable materials needed to conduct the prescribed statewide comprehensive assessment program; (3-15-02)

**b.** Statewide distribution of all assessment materials; and (3-29-12)

**c.** Processing and scoring student response forms, distribution of prescribed reports for the statewide comprehensive assessment program. (3-29-12)

**09. Costs of Additional Services.** Costs for any additional administrations or scoring services not included in the prescribed statewide comprehensive assessment program will be paid by the participating school districts. (3-15-02)

**10. Services.** The comprehensive assessment program should be scheduled so that a minimum of instructional time is invested. Student time spent in testing will not be charged against attendance requirements. (3-15-02)

**11. Test Security, Validity and Reliability.** Test security is of the utmost importance. To ensure integrity of secure test items and protect validity and reliability of test outcomes, test security must be maintained. School districts will employ security measures in protecting statewide assessment materials from compromise. Each individual who has any opportunity to see test items must sign a state-provided confidentiality agreement, which the district must keep on file in the district for at least two (2) years. Documentation of security safeguards must be available for review by authorized state and federal personnel. (4-2-08)

**a.** All ISAT paper and pencil test booklets will be boxed and shipped to the test vendor to be counted no later than two (2) weeks after the end of the testing window, as applicable. T(11-24-14)

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b. Any assessment used for federal reporting shall be independently reviewed for reliability, validity, and alignment with the Idaho Content Standards. (4-2-08)

**12. Demographic Information.** Accurate demographic information must be submitted as required for each test to assist in interpreting test results. It may include but is not limited to race, sex, ethnicity, and special programs, (Title I, English proficiency, migrant status, special education status, gifted and talented status, and socio-economic status). (4-2-08)

**13. Dual Enrollment.** For the purpose of non-public school student participation in non-academic public school activities as outlined in Section 33-203, Idaho Code, the Idaho State Board of Education recognizes the following: (3-15-02)

a. The Idaho Standards Achievement Tests (grades 3-9 and High School). (3-29-12)

b. A portfolio demonstrating grade level proficiency in at least five (5) of the subject areas listed in Subsections 111.13.b.i. through 111.13.b.vi. Portfolios are to be judged and confirmed by a committee comprised of at least one (1) teacher from each subject area presented in the portfolio and the building principal at the school where dual enrollment is desired. (4-6-05)

i. Language Arts/Communications. (3-15-02)

ii. Math. (3-15-02)

iii. Science. (3-15-02)

iv. Social Studies . (3-15-02)

v. Health. (3-15-02)

vi. Humanities. (3-15-02)

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**SUBJECT**

Recommendations from the Idaho Literacy Taskforce.

**REFERENCE**

September 6, 2013

State Board of Education approves the Taskforce for Improving Education recommendations.

**APPLICABLE STATUTE, RULE, OR POLICY**

Idaho Code 33-1614, 33-1615, and 33-1207A

**BACKGROUND/DISCUSSION**

The Governor's Taskforce for Improving Education met for nine (9) months and reviewed current research and data regarding education in Idaho. One of the Taskforce's recommendations included a renewed focus on literacy:

**Literacy Proficiency**

We recommend students demonstrate mastery of literacy before moving on to significant content learning. Reading proficiency is a major benchmark in a student's education. Students must learn to read before they can read to learn content in other subject areas.

To create a series of recommendations to achieve this goal, the Department of Education created a Literacy Taskforce to examine literacy in Idaho and make recommendations. The committee included 20 individuals from across Idaho, including Board member Debbie Critchfield. The taskforce reviewed the history of literacy in Idaho, including the Idaho Comprehensive Literacy Act passed by the Legislature in 1997 that formed the Idaho Reading Initiative as well as best practices, and student achievement data.

The taskforce met six (6) times and was facilitated by Dr. Marybeth Flachbart, CEO of Neuhaus Education Center and Education Northwest provided technical assistance.

Attached is the committee's final report. A summary of recommendations by topic area follows:

**Assessment**

- The Idaho Reading Indicator should be used to screen K-3 students for literacy comprehension.
- The Idaho Reading Indicator should not be used for accountability at the student, teacher, or school level. Progress monitor may be used for this purpose as it measures student growth over time.
- The Idaho Reading Indicator should be reviewed to address concerns about its' technical adequacy and to explore alternative measures.
- The Idaho Department of Education should provide screening and progress monitoring tools to LEAs.



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- LEAs should continue to screen and monitor progress of students behind third grade until students who are not meeting grade-level proficiency have mastered grade-level expectations.
- The Idaho Department of Education should provide K-3 diagnostic assessments in early reading to LEAs.

**Curriculum and Instruction**

- The state should remove the requirement to provide 40 hours of intervention to any student receiving a score of one (1) on the IRI.
- IRI intervention funds should be allocated to provide evidence-based literacy interventions to students identified as, at-risk. The selection of interventions shall be at the discretion of the school and district. At-risk status should be defined in relation to end-of-year expectations.

**Professional Development for Teachers and Administrators**

- The Idaho Department of Education should provide professional development in the administration and analysis of assessment data, to include the Smarter Balanced Assessment.
- The Department of Education should reevaluate the expectations and implementation of the Idaho Comprehensive Literacy Course every two years.
- The Idaho Department of Education should provide professional development in the delivery of effective, evidence-based literacy instruction and intervention.

**Policy, Evaluation and Funding**

- The Idaho State Board of Education should re-authorize the Idaho Comprehensive Literacy Act every five years.
- The Idaho Department of Education should conduct ongoing reading initiative program evaluations with formal reports due every two years.
- The state legislature should revise the support-unit divisor for kindergarten from 1:40 to 1:30.
- Given the critical relationship between literacy and academic success, the committee recommends funding for the Idaho Reading Initiative be restored to FY2009 levels.

**ATTACHMENTS**

Attachment 1 – List of Committee Members

Page 5

Attachment 2 – Idaho Literacy Taskforce Report

Page 7

**STAFF COMMENTS AND RECOMMENDATIONS**

Board staff have reviewed the Literacy Taskforce Report and will work with the Department of Education to bring forward an implementation plan for those items that are actionable for future Board approval.

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The Literacy Taskforce Report references the Idaho Comprehensive Literacy Act of 1999. This legislative action included four Senate resolutions and three bills that are now known as Sections 33-1207A, 33-1614, and 33-1615. The common practice would be to amend relevant sections of code rather than “reauthorize” a past act. The Comprehensive Literacy Plan was established in part to be regularly updated and would be the best mechanism for re-evaluating current and implementing emerging best practices. As an example, Section 33-1207A, Idaho Code, Teacher Preparation, has been amended three (3) times (2000, 2002, and 2010) to provide updates relevant with changes in the teacher preparation programs.

Additionally, the Idaho Comprehensive Literacy Plan as referenced in Section 33-1614, Idaho Code, was adopted by the Board in 1999. Pursuant to that section, the plan is “Board approved and research based.” While the Department of Education updated the plan in 2012, that update has not yet come forward to the Board for approval. While not a recommendation of the taskforce, staff recommends the Idaho Comprehensive Literacy Plan be updated and then brought forward to the Board for approval.

**BOARD ACTION**

This item is for informational purposes only. Any action will be at the Board’s discretion.

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**Idaho Literacy Task Force Members**

**Facilitators**

Dr. Marybeth Flachbart	President and CEO, Neuhaus Education Center
Dr. Steve Underwood	Manager, Northwest Comprehensive Center at Education Northwest
Claire Gates	Senior Program Advisor, Northwest Comprehensive Center at Education Northwest
Erin Lolich	Curriculum and Instruction Practice Expert, Northwest Comprehensive Center at Education Northwest

**Task Force Members**

Carrie Aguas	Principal, New Plymouth School District
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Debbie Bauer	Kindergarten Teacher, Fremont School District
Lisa Boyd	Principal, Vallivue School District
Hollis Brookover	VP of Development, Idaho Business for Education
Dr. Mary Ann Cahill	Professor, Boise State University
Karen Christensen	Director of Student Services, Cassia County School District
Debbie Critchfield	Idaho State Board Member
Camille Cureton	Principal, West Jefferson School District
Dr. Sherry Dismuke	Professor, Boise State University
Barb Dixon	School Board Chair, Meadows Valley School District
Meghan Graham	Third Grade Teacher, Sage International School
Virginia Herbst	Second Grade Teacher, McCall-Donnelly School District
Dr. Evelyn Johnson	Professor, Boise State University
Bobbie Malvini	Kindergarten Teacher, Vallivue School District
JoBeth Morrison	First Grade Teacher, West Side School District
Natalie Nation	Idaho Library Association
LeAnn Simmons	Executive Director, Idaho Voices for Children

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Glen Szymoniak	Superintendent, McCall-Donnelly School District
Jolene Taggart	Third Grade Teacher, New Plymouth School District
Sen. Steven Thayn	Senator, Idaho Legislature
Rep. Julie Van Orden	Representative, Idaho Legislature

**Department of Education Staff**

Luci Willits	Chief of Staff
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Diann Roberts	ELA/Literacy Coordinator
Toni Wheeler	Alt. Assessment Coordinator

## **Idaho Literacy Task Force Report November 19, 2014**

### **Introduction**

The Governor's Task Force on Education identified literacy as a key foundational skill and recommended the state revisit state policy related to early reading. In June 2014, the Idaho Literacy Task Force gathered to review existing early literacy legislation, the Idaho Comprehensive Literacy Act, and create recommendations for revisions to submit to the State Board of Education. The Task Force's approximately 20 members from across the state included K-3 teachers, school administrators, professors of education, state legislators, a state board member, business representatives, librarians, and other advocates of early literacy.

Over the course of six months, the Task Force developed a common understanding of the Idaho Comprehensive Literacy Act (ICLA) of 1997, including its requirements at the school, preservice, and inservice levels. At the school level, requirements include using the Idaho Reading Indicator to screen every K-3 student, providing at least 40 hours of intervention to students identified as most in need, and public reporting of school-level results (Barr and Flachbart, 2003). Preservice requirements include aligning college coursework with the ICLA, stipulating that K-8 teacher candidates pass an assessment demonstrating their knowledge and skills, and reporting yearly on the number of preservice teachers who took and passed the assessment. For inservice requirements, K-8 teachers need to pass a three-credit reading instruction course in order to maintain certification.

Within six years of the legislation passing, the state experienced successes and challenges related to the ICLA (Underwood, 2013). While reading achievement improved statewide, concerns were raised in regards to aspects of the educational system that were not addressed, such as the importance of teacher collaboration, the role of instructional leadership, the need for high quality instructional materials, the practice of tracking students rather than having flexible intervention systems, and the need for more resources in professional development and intervention beyond third grade. The early 2000s brought changes to early reading in Idaho, including implementation of the federal Reading First Initiative and shifts in the assessment measures of the Idaho Reading Indicator. Further changes occurred in 2009 and after as the state budget became tighter and when the resources and professional development offered by Reading First expired with no further federal funding.

Considering the substantial history of early literacy efforts in Idaho, and in order to make well informed decisions, the Task Force engaged in collective learning about the components of a comprehensive assessment system, the early literacy policies of other states, understanding dyslexia (including instructional and policy implications), and the research on proven ways to bring effective practices to scale across a state. Schools representing Idaho's diverse students

and a broad range of learning challenges presented the strategies they have employed which have been effective in raising early literacy achievement. Based on the strategies presented, Idaho's most effective schools share the following characteristics:

- Every teacher is expected to be a reading expert
- The principal and/or reading specialist provides strong schoolwide literacy leadership
- Teachers exhibit strong collaboration
- Early intervention is targeted
- Interventions are research-based, explicit, and systematic
- Schools engage families by teaching them strategies to support their students
- Schools have processes to consistently use specific schoolwide data and evidence

Given that successful schools exhibit these characteristics, the Task Force sought to establish sound methods for creating a policy environment that cultivates such practices. After careful consideration, discussion, and debate, the Task Force agreed upon the following recommendations to the State Board of Education.

## **Recommendations and Rationale**

### **A. ASSESSMENT**

**A1. Recommendation:** The Idaho Reading Indicator should be used to screen K-3 students.

Rationale: Screening is a cost- and time-efficient method of predicting reading success and identifying struggling readers (Gersten, Compton, Connor, Dimino, Santoro, Linan-Thompson, & Tilly, 2009). Screening all students fosters early reading intervention because it enables educators to catch struggling students early and to begin making crucial decisions about instructional interventions.

**A2. Recommendation:** The Idaho Reading Indicator as a screener should not be used for accountability at the student, teacher, or school level. Progress monitoring may be used for this purpose, as it measures student growth over time.

Rationale: While the Task Force understands the importance of accountability and educator evaluation, the Idaho Reading Indicator was designed to inform decision making before instruction, not to examine the effectiveness of an instructional program after its conclusion. Using a screening tool for accountability has the potential to compromise test administration and encourage teaching to the assessment, which in turn invalidates the results and undermines the purpose of the assessment (Santi & Francis, 2012). To maintain a proper focus on early identification, prevention, and remediation of student learning challenges, it is important that state policy foster an appropriate culture of assessment among educators.

- A3. Recommendation:** The Idaho Reading Indicator should be reviewed to address concerns about its technical adequacy and to explore alternative measures.

Rationale: The Idaho Reading Indicator has been provided by different vendors and has changed over the years. A study conducted by Drs. Kristi Santi and David Francis (2012) raised several concerns about the current version of the Idaho Reading Indicator, including its technical adequacy, the lack of reading comprehension questions, and questions about the purposes of the assessment. The current version was created for sole use by the state and may not provide the predictive validity necessary to screen students accurately. The Task Force believes it would be prudent to examine what changes may be necessary to ensure the best screening practices possible.

- A4. Recommendation:** The Idaho Department of Education should provide screening and progress monitoring tools to LEAs.

Rationale: The Department of Education plays a key role in supporting LEAs and ensuring consistent statewide practice by vetting, purchasing, and distributing assessments. Under a previous vendor for the Idaho Reading Indicator, progress monitoring assessments were provided at no cost to schools. This encouraged widespread use and met the intent of the ICLA. The Task Force agreed that with the known availability of low- and no-cost progress monitoring tools (Fuchs & Fuchs, 2001), the state should provide specific tools that schools can access and use freely.

- A5. Recommendation:** LEAs should continue to screen and monitor progress of students beyond third grade until students who are not meeting grade-level proficiency have mastered grade-level expectations.

Rationale: The state has a vested interest in the success of students' literacy skills beyond third grade. Screening and progress-monitoring data are key tools to guide instructional decisions for students who need continued instructional support and intervention (Stecker, Fuchs, & Fuchs, 2008). If LEAs are expected to continue progress monitoring in literacy, it increases the focus on continued intervention for struggling students in later grades.

- A6. Recommendation:** The Idaho Department of Education should provide K-3 diagnostic assessments in early reading to LEAs.

Rationale: Current state policy is ambiguous regarding how to target literacy interventions to students' specific learning needs. While screening assessments are brief and give general outcomes, diagnostic assessments are more in-depth and are used to pinpoint areas of student need and efficiently determine appropriate curriculum, instruction, and intervention needs. The state would benefit from providing diagnostic assessments at no cost to schools that can be used efficiently to narrow instructional focus for students who are identified as being at risk on the screening assessment.



## B. CURRICULUM & INSTRUCTION

- B1. Recommendation:** The state should remove the requirement to provide 40 hours of intervention to any student receiving a score of 1 (the most intensive level) on the IRI.

Rationale: This requirement was a well intended effort in 1997 to ensure students receive intervention. However, this requirement is too rigid for the current state of Idaho schools and does not account for students who reach grade-level expectations before receiving 40 hours of intervention, nor does it consider students who make very slow growth and need much more time.

- B2. Recommendation:** IRI intervention funds should be allocated to provide evidence-based literacy interventions to students identified as at risk. The selection of interventions should be at the discretion of the school and district. At-risk status should be defined in relation to end-of-year expectations.

Rationale: Existing intervention funds target students who get the lowest score (1) on the Idaho Reading Indicator. Schools must intervene with all students who are not on track to meet end-of-year expectations, which includes other students, such as those who score a 2. The Task Force agreed that the state should fund intervention efforts for all students who are at risk, not just the lowest. Professional judgment and local context should be considered when determining the most appropriate intervention approach for students with an at-risk status.

## C. PROFESSIONAL DEVELOPMENT

- C1. Recommendation:** The Idaho Department of Education should provide professional development in the administration and analysis of assessment data, to include the Smarter Balanced Assessment.

Rationale: Existing requirements under the ICLA do not require educators to be trained in data utilization. Proper training in test administration is essential to test validity and reliability. Professional development in analysis ensures that test results are correctly interpreted and used to make accurate decisions about instruction and resource allocation (Killion, 2013).

- C2. Recommendation:** The Idaho Department of Education should evaluate the expectations and implementation of the Idaho Comprehensive Literacy Course every two years.

Rationale: As policy, research, and practice evolve, the Idaho Comprehensive Literacy Course must change to reflect emerging best practices. Regular, formal review and

evaluation of this course will ensure that it is current and consistent (McColskey & Lewis, 2007).

- C3. Recommendation:** The Idaho Department of Education should provide professional development in the delivery of effective, evidence-based literacy instruction and intervention for all certified and classified educators.

**Rationale:** Existing requirements of the ICLA include one foundational course in literacy. However, this is insufficient to make every teacher an expert in teaching reading (Killion, 2013). In order to maintain and apply best practices in literacy instruction and intervention, educators require ongoing, high-quality professional development. Evidence-based literacy instruction and intervention includes phonemic awareness, decoding, fluency, vocabulary, and comprehension.

## **D. POLICY, EVALUATION AND FUNDING**

- D1. Recommendation:** The Idaho State Board of Education should reauthorize the Idaho Comprehensive Literacy Act every five years.

**Rationale:** Currently, there is no mechanism to cause the state to stop and reflect on needed changes to the ICLA. As research and practice evolve, the Idaho Comprehensive Literacy Act must change to reflect emerging best practices. A five-year reauthorization cycle, required by statute, must be implemented to guarantee that policy is not a hindrance to progress. The policy should be subject to best practice research and should be modified based on evaluation findings (McColskey & Lewis, 2007).

- D2. Recommendation:** The Idaho Department of Education should conduct ongoing reading initiative program evaluations with formal reports due every two years.

**Rationale:** The state intends to impact educator practices and student learning through its literacy policy. Significant time, effort, and financial resources are dedicated to this goal. As such, it is essential to understand if and how the goals are being met. Ongoing program evaluation by an external party with no vested interest in the policy enables Idaho policymakers to analyze trends, make program decisions, and deploy resources based on current data. Program evaluation is essential to fostering public trust and ensuring appropriate use of tax dollars (McColskey & Lewis, 2007; Fixsen, Blasé, Metz, & Van Dyke, 2013).

- D3. Recommendation:** The state legislature should revise the support-unit divisor for Kindergarten from 1:40 to 1:30.

**Rationale:** Under current statute, Idaho does not require students to attend kindergarten, and the legislature funds half-day kindergarten at a ratio of 1 support unit for 40 students.

This is compared to the ratio of approximately 1 to 20 for first grade and higher. Districts that are effectively intervening early in Idaho provide extended learning opportunities to kindergarten students who are at risk of academic challenges (Raney, 2014). To do this, they must find creative funding to make their efforts work. The Task Force recognizes that the state does not require, but funds, half-day kindergarten. The Task Force agrees that it would be in the state's long term interest both programmatically and financially to fund kindergarten at a higher level to incentivize early intervention for all students. The Task Force's recommendation would channel funding for districts to be funded at a 1 support unit to 30 student ratio, thereby increasing their ability to systematically create kindergarten intervention processes through extending kindergarten offerings to the students who need more instruction and support to be ready for first grade. Districts should use these funds to target extended reading interventions for students identified at risk. The funds should not be used for class-size reduction in other grade levels. Recognizing the fiscal impact, the Task Force understands that a multi-year phase in may be necessary and recommends such a phase in be no longer than five years (e.g., 1:38, 1:36, 1:34, etc.).

**D4. Recommendation:** The Idaho Department of Education should explore the creation of a literacy intervention speciality at the primary level.

**Rationale:** Given the critical necessity of early mastery of literacy in the primary grades, teachers need deep understanding of the acquisition of language and literacy. The practitioners on the Task Force all indicated that they had teachers with reading expertise on their staff as well as a literacy leader on their campus. In some instances, the literacy leader was the administrator, others had a reading specialist, and still others had a teacher with deep content knowledge who served as a mentor to colleagues.

**D5. Recommendation:** Given the critical relationship between literacy and academic success, the Task Force recommends funding for the Idaho Reading Initiative be restored and increased to the following levels.

- a) FY 2015 budget – restore funding for intervention from \$2.1 million currently allocated by the State Department of Education to \$4 million (the original funding in 2000). The funding should be structured by the legislature to be distributed in the following manner:
- 65% - intervention funds for grades K-3
  - 25% - committee work to develop the plans to scale up the Task Force recommendations (directed by the State Board of Education)
  - 9% - statewide administration and cost of administering the current assessment (directed by the Department of Education)
  - 1% - external evaluation costs (directed by the Department of Education)

b) FY 2016 budget – increase the funding for intervention from \$4 million to \$5.8 million annually for the FY 2016 budget and beyond. The funding should be structured by the legislature to be distributed in the following manner:

- 65% - intervention funds for grades K-3
- 25% - statewide assessment and professional development costs (directed by the Department of Education)
- 5% - statewide administration (directed by the Department of Education)
- 5% - external evaluation costs (directed by the Department of Education)

Rationale: In reviewing the history of the ICLA, the Task Force found that the funding for the Idaho Reading Initiative has been cut from approximately \$4 million per year to less than \$2 million per year, while costs associated with assessment and intervention have increased. The Task Force's intent in this recommendation is to ensure the state provides dedicated funding to early literacy interventions in grades K-3 in order to meet the state's goals of proficiency by the end of third grade. The funding allocation should be examined with each reauthorization period.

## **Conclusion**

A strong early literacy system is one of the best investments a state can make in its future. According to research from the Annie E. Casey Foundation, "Reading proficiently by the end of third grade is a crucial marker in a child's educational development. Failure to read proficiently is linked to higher rates of school dropout, which suppresses individual earning potential as well as the nation's competitiveness and general productivity." Knowing how to read proficiently enables a student to read and learn content in other subject areas.

In enacting the Idaho Comprehensive Literacy Act of 1997, Idaho was and is a leader in early literacy policy. However, given what has been learned in the research literature in the years since and given both the successes and challenges of existing policy, it is critical that the state make key adjustments. The Task Force agrees that the recommendations included in this report are the most prudent actions the state can make at this time to improve student outcomes through statewide early literacy policy.

The Idaho State Board of Education has a timely opportunity to rejuvenate the focus on early literacy through updated policy and strategic investment in proven practices in assessment, instruction, and professional development. The early literacy stakeholders represented on the Idaho Literacy Task Force call on the State Board of Education to act upon the recommendations above on behalf of the students of Idaho.

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**SUBJECT**

The Idaho Special Education Manual revisions

**REFERENCE**

August 2009	Board approved revisions to the State Special Education Manual
August 2010	Board approved revisions to the State Special Education Manual

**APPLICABLE STATUTE, RULE, OR POLICY**

Section 33-116, 33-2002, Idaho Code, IDAPA 08.02.03.109 (f)  
20 U.S.C. 1411-1419; 34 CFR 300,100-300.174, Individuals with Disabilities Education Act (IDEA)

**BACKGROUND/DISCUSSION**

The Individuals with Disabilities Education Act (IDEA) requires that states and districts establish policies, procedures and criteria for special education consistent with the federal regulations. In accordance, with the IDEA, Idaho developed the Special Education Manual.

The Manual is designed to help districts and schools understand the provisions of IDEA and meet the guidelines contained within the law. To receive federal funds available under the IDEA, districts must adopt and implement appropriate special education policies and procedures which will be approved by the State Board of Education consistent with state and federal laws, rules, regulations, and legal requirements. The Manual contains a sample set of approved policies and procedures that school district boards of trustees may adopt if they choose to do so. All districts in the state of Idaho have adopted this Manual. In addition to guidance, policies and procedures, the manual includes documents and forms covering different aspects of special education.

The Manual has not been reviewed in its entirety since 2009. The Manual has recently been updated as federal regulations have changed. A number of stakeholders have been included and consulted in updating the Special Education Manual including, the State Department of Education, staff, regional consultants, district special education directors, special education service providers, and parent advocacy organization staff. There have been two (2) thirty day comment periods generating substantial feedback. Comments have been reviewed by a committee made up of a wide variety of stakeholders statewide.

**IMPACT**



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Once approved districts will update their articles and procedures in accordance with the Manual.

**ATTACHMENTS**

Attachment 1 – Revised - Idaho Special Education Manual, 2015

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**BOARD ACTION**

I move to approve the Revised Idaho Special Education Manual, 2015, as submitted in Attachment 1.

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

# IDAHO SPECIAL EDUCATION MANUAL ~~2007~~

*Revised ~~2009~~*

# 2015

~~Division of Student Achievement~~

~~And School Improvement~~

~~Idaho State Department of Education~~

Division of Special Education



Idaho State Department of Education

~~Tom Luna~~

~~Superintendent of Public Instruction~~

**STATE DEPARTMENT OF EDUCATION  
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**Nondiscrimination Clause**

Federal law prohibits discrimination on the basis of race, color, religion, sex, national origin, age, or disability in any educational programs or activities receiving federal financial assistance. (Title VI and VII of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; and the Americans with Disabilities Act of 1990.)

It is the policy of the Idaho State Department of Education not to discriminate in any educational programs or activities, or in employment practices.

Inquiries regarding compliance with this nondiscriminatory policy may be directed to the State Superintendent of Public Instruction, P.O. Box 83720, Boise, ID 83720-0027, (208) 332-6800, or to the Director, Office of Civil Rights, Department of Education, Washington, D.C.

**Idaho Special Education Manual**

The policies and procedures contained in this Idaho Special Education Manual have been approved by the State Board of Education, meet the IDEA eligibility requirement of 20 U.S.C. Section 1412, and are consistent with state and federal laws, rules, regulations, and legal requirements. The State Department of Education (SDE) and educational agencies shall adopt policies and procedures for providing special education services. The SDE provides the policies and procedures herein to local educational agencies (LEA) that are consistent with governing education requirements for their adoption. This manual, therefore, represents governing special education requirements. (See IDAPA 08.02.03.109.01.e)

In the case of any conflict between Idaho Administrative Code (IDAPA) and the Individuals with Disabilities Education Act (IDEA), the IDEA shall supersede the IDAPA, and IDAPA shall supersede the Idaho Special Education Manual.

*This document was developed and printed by the Idaho State Department of Education using grant funds from the Individuals with Disabilities Education Act 2004, PR/Award #H027A080088A.*

STATE DEPARTMENT OF EDUCATION  
DECEMBER 18, 2014



STATE DEPARTMENT OF EDUCATION

P.O. BOX 83720  
BOISE, IDAHO 83720-0027

TOM LUNA  
STATE SUPERINTENDENT  
PUBLIC INSTRUCTION

## INTRODUCTION

A message from Superintendent Tom Luna:

One of the most important things we do at the State Department of Education (SDE) is support the work done at the local level by our teachers, administrators and other school staff. We offer that support by providing technical expertise and assistance in a variety of areas.

The *Idaho Special Education Manual 2007* is designed to help you understand the provisions of the Individuals with Disabilities Education Improvement Act (IDEA) and meet the guidelines contained within the law. To receive federal funds available under the IDEA, districts must adopt and implement appropriate special education policies and procedures. Those policies and procedures must be approved by the SDE consistent with state and federal laws, rules, regulations, and legal requirements.

To help you, this manual contains a sample set of approved policies and procedures that boards of trustees may adopt if they choose to do so. The appendices in this manual are meant to clarify and assist you in adopting policies; they should not be viewed or adopted as policies in and of themselves.

To the extent possible, we try to make the process of understanding state and federal regulations as easy as possible. If you have questions or comments about this manual or any service offered by the SDE, I hope you will take the time to contact us.

Sincerely,

Tom Luna

Superintendent of Public Instruction

Office Location 650 West State Street	Telephone 208-332-6800	Speech/Hearing Impaired 1-800-377-3529	Fax 208-334-2228
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**ACRONYMS AND ABBREVIATIONS**

Section 504	Section 504 of the Rehabilitation Act of 1973
ABS	American Association on Mental Retardation Adaptive Behavior Scale
ADA	Americans with Disabilities Act
A.D.A.	Average Daily Attendance
ADD	Attention Deficit Disorder
ADHD	Attention Deficit Hyperactivity Disorder
ADR	Alternative Dispute Resolution
APR	Annual Performance Report
ASD	Autism Spectrum Disorder
ASHA	American Speech/Language Hearing Association
AT	Assistive Technology
ATRC	Assistive Technology Resource Center
AU	Autism
AYP	Adequate Yearly Progress
BIP	Behavioral Intervention Plan
<u>CADRE</u>	<u>National Center on Dispute Resolution in Special Education</u>
CALP	Cognitive Academic Language Proficiency
CAP	Corrective Action Plan
CBM	Curriculum-Based Measurement
CDC	Child Development Center
CEC	Council for Exceptional Children
CEIS	Comprehensive Early Intervening Services
C.F.R.	Code of Federal Regulations
CI	Cognitive Impairment ( <u>see Intellectual Disability</u> )
CIP	Continuous Improvement Plan

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CLD	Culturally or Linguistically Diverse
<del>Co-Ad</del>	<del>Comprehensive Advocacy, Inc.</del>
<del>CS</del>	<del>Consultant Specialist (ends June 30, 2006)</del>
DB	Deaf-Blindness
DD	Developmental Delay
DDA	Developmental Disabilities Agency
DHW	Department of Health and Welfare
DJC	Department of Juvenile Corrections
DMA	Direct Math Assessment
DOC	Department of Correction
DP	Due Process
<u>DRI</u>	<u>Disability Rights Idaho</u>
DSM	Diagnostic Services Manual
DWA	Direct Writing Assessment
ECR	Early Complaint Resolution
ECSE	Early Childhood Special Education
ED	Emotional Disturbance
ENT	Ear, Nose and Throat
ESEA	Elementary and Secondary Education Act
ESL	English as a Second Language
ESY	Extended School Year
FAE	Fetal Alcohol Effect
FAPE	Free and Appropriate Public Education
FAS	Fetal Alcohol Syndrome
FBA	Functional Behavioral Assessment
FERPA	Family Educational Rights and Privacy Act
GED	General Education Development



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GEPA	General Education Provisions Act
GPA	Grade Point Average
GRPA	Government Performance Review Act
G/T	Gifted/Talented
<del>HI</del>	<del>Health Impairment</del>
HH	Hard of Hearing
HOUSSE	Highly Objective Uniform State Standard of Evaluation
IAA	Idaho Alternate Assessment
IAES	Interim Alternative Educational Setting
IASA	Improving America's School Act
IATP	Idaho Assistive Technology Project
IBEDS	Idaho Board of Education Data System
IBI	Intensive Behavioral Interventions
IC	Idaho Code
<u>ID</u>	<u>Intellectual Disability</u>
IDAPA	Idaho Administrative Procedures Act
<del>IELS</del>	<del>Idaho Early Learning Standards</del>
IDEA 2004	Individuals with Disabilities Education Improvement Act 2004
IDELR	Individuals with Disabilities Education Law Report
IDVR	Idaho Division of Vocational Rehabilitation
IEE	Independent Educational Evaluation
<u>IELG</u>	<u>Idaho Early Learning Guidelines (eGuidelines)</u>
<del>IELS</del>	<del>Idaho Early Learning Standards</del>
IEP	Individual Education Program
IFSP	Individual Family Services Plan
IN	Individual (Medicaid Service Code)
IPUL	Idaho Parents Unlimited, Inc.

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IQ	Intelligence Quotient
IRI	Idaho Reading Indicator
ISAT	Idaho Standards Achievement Test
ISBOE	Idaho State Board of Education
ISDB	Idaho School for the Deaf and Blind
ISEAP	Idaho Special Education Advisory Panel
ITC	Idaho Training Clearinghouse
ITP	Infant/Toddler Program
JDC	Juvenile Detention Center
LD	Learning Disability
LEA	Local Education Agency
LEP	Limited English Proficiency
LI	Language Impairment
LD	Learning Disability
LG	Large Group, <u>three (3)</u> or more (Medicaid Service Code)
LOA	Letter of Authorization (ends June 30, 2006)
LRE	Least Restrictive Environment
MD	Multiple Disabilities
MDT	Multidisciplinary Team
<u>MTSS</u>	<u>Multi-Tiered System of Support</u>
NAEP	National Assessment of Educational Progress
NCLB	No Child Left Behind Act
O & M	Orientation and Mobility
OCR	Office of Civil Rights
<u>OHI</u>	<u>Other Health Impaired</u>
OI	Orthopedic Impairment
OMB	Federal Office of Management and Budget

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OSEP	Office of Special Education Programs
OSERS	Office of Special Education and Rehabilitation Services
OT	Occupational Therapy
PBIS	Positive Behavioral Interventions and Supports
PBS	Positive Behavioral Supports
PERC	Parent Education Resource Center
PGI	Performance Goals and Indicators
PIR	Plan for Improving Results
<u>PLAAFP</u>	<u>Present Levels of Academic Achievement and Functional Performance (Also known as PLOP for Present Levels of Performance)</u>
PLOP	<u>Present Levels of Performance (Also known as PLAAFP for Present Levels of Academic Achievement and Functional Performance)</u>
PSR	Psycho-Social Rehabilitation
PT	Physical Therapy
PTI	Parent Training and Information Center
PWN	Prior Written Notice
RTI	Response to Intervention
SBI	Serious Bodily Injury
SBE	State Board of Education
SBR	Scientifically-Based Research
SD	Standard Deviation
SDE	State Department of Education
SEA	State Education Agency
SEAP	Special Education Advisory Panel
SG	Small Group, 2 (Medicaid Service Code)
SI	Speech Impairment
SIG	State Improvement Grant
<u>SLD</u>	<u>Specific Learning Disability</u>

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SLP	Speech-Language Pathologist
SOP	Summary of Performance (secondary)
SP	Services Plan
SPP	State Performance Plan
SS	Standard Score
TBI	Traumatic Brain Injury
VI	Visual Impairment

## GLOSSARY

**Academic achievement.** A student's level of performance in basic school subjects, measured either formally or informally.

**Accommodation.** Changes in the curriculum, instruction, or testing format or procedures that enable students with disabilities to participate in a way that allows them to demonstrate their abilities rather than disabilities. Accommodations are generally considered to include assistive technology as well as changes in presentation, response, timing, scheduling, and settings that do not fundamentally alter the requirements. Accommodations do not invalidate assessment results and do not fundamentally alter the requirements (or course expectations).

**Adaptation.** Changes to curriculum, instruction, or assessments that fundamentally alter the requirements, but that enable a student with an impairment that significantly impacts performance an opportunity to participate. Adaptations include strategies such as reading the reading portion of a test, using spell/grammar check for language arts assessments, and substituting out-of-level testing. Adaptations fundamentally alter requirements and invalidate assessment results and provide non-comparable results.

**Adaptive behavior.** Behavior that displays an age-appropriate level of self-sufficiency and social responsibility which includes the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, direction, functional academic skills, work, leisure, health, or safety.

**Adverse educational Impact (adverse effect).** A determination made by the evaluation team that the student's progress is impeded by the disability to the extent that the educational performance is significantly and consistently below the level of similar age peers preventing the student from benefitting from general education. ~~harmful or unfavorable influence that a disability has on a student's educational performance in academic (reading, math, communication, etc.) or non-academic areas (daily life activities, mobility, pre-vocational and vocational skills, social adaptation, self-help skills, etc.)~~ The phrases "adverse impact" and "adverse effect" are used interchangeably in this manual and have the same meaning. (See also "educational performance")

**Adult student.** A student with a disability, age eighteen (18) or older, to whom rights have transferred under the IDEA ~~2004~~ and Idaho Code, and who has not been deemed legally incompetent by a court or deemed ineligible to give informed consent by the IEP Team.

**Age-appropriate activities.** Activities that typically-developing children of the same age would be performing or would have achieved.

**Age of majority.** The age at which, by law, a child assumes the responsibilities of an adult. In Idaho, the age of majority is eighteen (18).

**Aggregated data.** Information that is considered as a whole. In this manual, the term refers to collective data on all students, including students with disabilities.

**Alternate assessment.** A specific assessment, developed by the state in lieu of statewide assessments or by the district in lieu of districtwide assessments, designed to measure functional skills within the same domains required by the regular statewide or district wide assessments. It is designed for students who are unable to demonstrate progress in the typical manner and who meet the state-established criteria.

**Alternative authorization/teacher to new certification.** One of the State Board of Education's alternative routes to teacher certification as outlined in the Idaho Certification Manual distributed by the Idaho State Department of Education. ~~Effective July 1, 2006.~~

**Alternative or supplementary curriculum.** Curriculum not based on or drawn directly from the general education curriculum.

**Alternative school.** A public school placement option that may be utilized for students who are not succeeding in the traditional school environment but may benefit through the use of modified curriculum or flexible programming.

**Articulation.** The ability to speak distinctly and connectedly.

**Articulation disorder.** Incorrect productions of speech sounds, including omissions, distortions, substitutions and/or additions that may interfere with intelligibility.

**American with Disabilities Act (ADA) of 1990.** A federal law prohibiting discrimination on the basis of disability in employment, State and local government, public accommodations, commercial facilities, transportation, and telecommunications. An individual with a disability is defined by the ADA as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment. The ADA does not specifically name all of the impairments that are covered.

**Assessment.** The formal or informal process of systematically observing, gathering, and recording credible information to help answer evaluation questions and make decisions. It is an integral component of the evaluation process. A test is one method of obtaining credible new information within the assessment process. Assessment data may also include observations, interviews, medical reports, data regarding the effects of general education accommodations and adaptations and interventions, and other formal or informal data.

**Assistive technology device.** Any item, piece of equipment, or product system whether acquired commercially, off a shelf, modified, or customized that is used to increase, maintain, or improve the functional capabilities of a student with a disability. Excludes surgically implanted medical devices.

**Assistive technology service.** Any service that directly assists a student with a disability with the assessment, selection, acquisition, or use of an assistive technology device. The term includes the evaluation of the need of the student; purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices; selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing devices; coordinating and using other therapies, interventions, or services with existing education and rehabilitation plans and programs; training or technical assistance for a student and/or family; and training or technical assistance for professionals, employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of the student.

**Attention deficit disorder (ADD).** A biologically based mental disorder that has these typical characteristics: short attention span; distractive behavior; difficulty following directions and staying on task; and an inability to focus behavior. The disorder compromises many skills needed for academic success, including starting, following through with, and completing tasks; moving from task to task; and following directions.

**Attention deficit hyperactivity disorder (ADHD).** A biologically based mental disorder in which a person has inappropriate degrees of inattention, impulsiveness and hyperactivity.

**Audiologist.** A licensed health care professional who diagnoses hearing loss and selects and fits hearing aids.

**Autism.** ~~An IDEA 2004~~ disability category in which a developmental disability, generally evident before age three (3), significantly affects verbal ~~and~~ or nonverbal communication skills and social interactions and adversely affects educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

**Basic reading skills.** For the purpose of specific learning disability eligibility, includes sight word recognition, phonics, and word analysis. Essential skills include identification of individual sounds and the ability to manipulate them, identification of printed letters and sounds associated with letters, and decoding of written language.

**Behavioral intervention plan (BIP).** A plan comprising practical and specific strategies designed to increase or reduce a definable behavior. These strategies address preventative techniques, teaching replacement behaviors, how to respond or resolve behaviors, and crisis management, if necessary.

**Benchmark.** A major milestone which describes the progress the student is expected to make toward annual goals within a specified period of time. Similar to an objective.

**Braille.** A tactile system of reading and writing, used by students who are blind or visually impaired, with an official code composed of Braille characters or cells that consist of

various patterns of raised dots that correspond to alphabetic letters, punctuation marks and other symbols.

**Business day.** A workday (Monday through Friday) except for federal and state holidays, unless specifically included.

**Case manager.** A member of the evaluation and/or IEP team (usually the special education teacher) who is designated to perform administrative functions for the team, including: (1) setting up meetings; (2) ensuring appropriate forms are completed; (3) ensuring timelines are met; and (4) ~~notifying participants of the times and dates of meetings.~~ includes the responsibility of coordinating and overseeing the implementation of the IEP.

**Change of placement.** ~~Removal of a child with a disability from the child's current educational placement. When the removal is for disciplinary purposes, regulations apply, 34 CFR §300.536. A change in educational placement relates to whether the student is moved from one type of program -- i.e., regular class -- to another type -- i.e., home instruction. Or it may also occur when there is a significant change in the student's program even if the student remains in the same setting.~~

**Change of placement for disciplinary reasons.** A removal from the current educational placement for more than ten (10) consecutive school days or a series of removals that constitute a pattern when they total more than ten (10) school days in a school year. Factors such as the length of the removal, the proximity of the removals to one another, ~~and~~ the total amount of time the student is removed are indicators of a pattern-, and whether the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals.

**Charter school within a district.** A publicly funded, nonprofit, nonsectarian public school that is created by a formal agreement (charter) between a group of individuals and the board of trustees of the local school district and operates independently within the district. It is governed by the conditions of its approved charter and federal and state laws. It is the responsibility of the local district to ensure that students attending such charter schools receive appropriate services as required by IDEA 2004, Section section-504 and the ADA.

**Charter school LEA.** A publicly funded, nonprofit, nonsectarian public school that operates as its own local education agency or district. Charter LEAs do not have an agreement with the local school district within whose boundaries they operate. Charter LEAs must be authorized by the Idaho Public Charter School Commission and are required to provide services in accordance with IDEA 2004, section 504 and the ADA.

**Child.** An individual who has not attained age eighteen (18).

**Child count.** For purposes of the annual report required under IDEA 2004, the State must count and report the number of children with disabilities receiving special education and related services on any date between October 1 and December 1 of each year.



**Child find.** A process to locate, identify, and evaluate ~~students who reside in the district and~~ individuals ages three (3) to twenty-one (21) who are suspected of having a disability and in need of special education.

**Civil action.** A judicial action that any party who is aggrieved by the final decision of a due process hearing officer may bring in either a federal district court or a state court of competent jurisdiction (as designated by Idaho law ~~the state~~).

**Cognitive academic language proficiency (CALP).** A test to determine a student's appropriate language dominance/usage.

~~**Cognitive impairment.** An IDEA 2004 disability category in which subaverage intellectual functioning exists concurrently with deficits in adaptive behavior. These deficits are manifested during the student's developmental period and adversely affect the student's educational performance. The term "mental retardation" was previously used to refer to this condition.~~

**Common core (See "Idaho core standards")**

~~**Comparable benefit.** The IDEA 2004 requirement that obligates districts to ensure that private school students with disabilities receive benefits that are comparable in quality, scope, and opportunity for participation in special education services funded by the IDEA 2004 to those students with disabilities enrolled in public schools.~~

**Compensatory education.** Educational services or remedies which are above and beyond those normally due a student under his or her state's education law. The principle is acknowledged by most courts that have considered the issue to be an appropriate equitable remedy when a student has been denied free appropriate public education. Services that would put the student in the same position had they not been denied a FAPE.

~~**Compensatory remedy.** A judicial order or administrative action intended to redress a violation of the rights of a student with a disability who has suffered a loss as a result of the wrongful or negligent act of another and to restore the student to the position he or she would have been in if the wrongful or negligent act had not occurred. The remedy may include the award of monetary reimbursement or other corrective actions as appropriate to the needs of the student.~~

**Complaint. (state administrative complaint)** A formal, written, and signed statement submitted to the Idaho State Department of Education by an individual or organization that contains one or more allegations and the facts on which the statement is based that a district or agency has violated a requirement of ~~Part B of the IDEA 2004~~ within the last year.

**Comprehensive Coordinated early intervening services (CEIS).** Services for students (K-12) who need additional academic and behavioral support to succeed in a general education

environment. These students have not been identified as having a disability under the IDEA.

**Consensus.** Following the opportunity for each member to provide input and gain clarification, the resulting outcome where each member agrees to support the decision of the group. ~~Has two common meanings. Consensus is usually defined as meaning both: a) the general~~ agreement, and b) the process of ~~getting to~~ reaching such agreement. ~~Consensus decision-making is thus concerned primarily with that process~~

(1) ~~A general agreement among the members of a given group or community, each of which exercises some discretion in decision-making and follow-up action.~~

(2) ~~A decision-making process that not only seeks the agreement of most participants, but also to resolve or mitigate the objections of the minority to achieve the most agreeable decision.~~

**Consent.** Voluntary, written approval of a proposed activity, as indicated by a ~~parent and/or adult student~~ parent/adult student signature. The ~~parent and/or adult student~~ parent/adult student must be fully informed of all relevant information in his or her native language or other mode of communication and must understand all information relevant to the activity to make a rational decision.

**Conservator.** A person appointed by the court to handle financial decisions for a person who is incapacitated or debilitated. In Idaho the conservator has all of the powers conferred in Idaho Statute 15-5-424 and any additional powers conferred by law on trustees in this state. In addition, a conservator of the estate of an unmarried minor under the age of eighteen (18) years, as to whom no one has parental rights, has the duties and powers of a guardian of a minor described in section 15-5-209 of this code until the minor attains the age of eighteen (18) or marries, but the parental rights so conferred on a conservator do not preclude appointment of a guardian as provided by part 2 of this chapter, Idaho Statute 15-5-424.

**Consultant Specialist (CS).** ~~The SDE may issue a Consultant Specialist letter of approval to use a highly and uniquely qualified individual in an educational position that normally requires formal certification. This provision expires June 30, 2006.~~

**Controlled substance.** Any drug so designated by law whose availability is restricted; i.e., so designated by federal Controlled Substances Acts. Included in such classifications are narcotics, stimulants, depressants, hallucinogens, and marijuana. (See Schedule I, II, III, IV or V in section (c) of the Controlled Substances Act (21 U.S.C. 812(c))

**Core academic subjects.** These include English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography under the ESEA (NCLB).

**Corrective action plan (CAP).** A plan that orders a district as a result of an IDEA 2004 complaint to take corrective actions to resolve legal deficiency as found by the SDE.

**Critical life skill.** Skills that lead to independent functioning. Development of these skills can lead to reduced dependency on future caretakers and enhance students' integration with nondisabled individuals. Skills may include such things as toileting, feeding, mobility, communication, dressing, self-help, and social/emotional functioning.

**Dangerous weapon.** A weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length.

**Data-based decision making.** The collecting of information that can be charted or graphed to document performance over time followed by an analysis of the information to determine needed changes in policies, programs, or procedures.

**Day.** Refers to a calendar day unless otherwise indicated as a business or school day.

**Deaf-blindness.** An IDEA 2004 disability category in which a student demonstrates hearing and visual impairments, and where the combination of these two disabilities causes such severe communication and other developmental and educational needs that the student cannot be accommodated with special education services designed solely for students with deafness or blindness.

**Deafness.** An IDEA 2004 disability category in which ~~a hearing impairment~~ loss or inability is so severe that the student, with or without amplification, is limited in processing linguistic information through hearing, which adversely affects educational performance.

**Detained youth.** Anyone aged three (3) through twenty-one (21) who is being held for a crime regardless of whether or not that person has appeared before the court.

**Developmental achievement.** Gains a student makes which follow the pedagogic theory that all children learn in the same basic way and in the same sequence, although at different rates.

**Developmental delay.** An IDEA 2004 disability category used only for students ages three (3) through nine (9) for whom a significant delay exists in one or more of the following skill areas: receptive/expressive language; cognitive abilities; gross/fine motor functioning; social/emotional development; or self-help/adaptive functioning. The use of this category is optional for districts.

**Disaggregated data.** Information that is reported and/or considered separately on the basis of a particular characteristic. In this manual, the term refers to data on special education students as a group that is reported and/or considered separately from the same data on all students in a school, district, or state.

**Discipline.** Actions taken in response to a student's violation of the student conduct code. A set of rules or techniques designed by a district for the purpose of minimizing disruption and promoting positive interaction.

**Disclosure.** The access to or the release, transfer or other communication of education records, or personally identifiable information contained in these records by oral, written, electronic, or other means.

**Discrepancy formula.** A method of determining the difference between a student's expected level of academic achievement and intellectual ability used, to establish eligibility for special education under the category of learning disability.

**Disproportionality.** A disparity or inequality. In this manual, the term refers to a statistical range of data where students of a specific race or ethnicity are identified in either greater or fewer numbers than expected when compared to the representation of that race or ethnicity within the general school population. The areas addressed in the IDEA 2004 are: (1) identification as a student with a disability; (2) identifications a student with a specific category of disability; and (3) placement in a particular educational setting and (4) the incidence, duration of any type of disciplinary actions, including suspensions and expulsions.

**District.** A local educational agency (LEA), inclusive of the following terms: a local district, a state authorized charter school, a state operated program, and a traditional school. See also "LEA"

**Dropout.** A student who has voluntarily left an education system before completion of requirements and is not known to be enrolled in any other educational program.

**Dual enrollment.** A child of school-age who is enrolled in a nonpublic school (including a homeschool) or a public charter school and enrolled in a public school to participate in public school programs and activities, Idaho Statue 33-203. See also "nonpublic school" and "nonpublic student"

**Due process hearing.** An administrative hearing conducted by an SDE-appointed hearing officer to resolve disputes on any matter related to identification, evaluation, educational placement, or the provision of a free appropriate public education under the IDEA.

**Educational performance.** A student's educational performance in achievement, developmental and or functional skills.

**Education record.** A student's record containing personally identifiable information maintained by an educational agency or institution, or by a party acting for the agency or institution, which may include, but is not limited to print, handwriting, computer media, video or audio tape, film, microfilm, and microfiche, but is not within the exceptions set out in the Family Educational Rights and Privacy Act (FERPA). The documents in the education record used to determine current eligibility and monitor current progress are considered

part of the education record and are maintained. Items in the educational record that are no longer used, or have been summarized, may be removed from the educational record after written parental notification.

**Educational services agency, other public institution or agencies.** (1) An educational service agency, as defined in 34 CFR §300.12; and (2) Any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including a public nonprofit charter school that is established as an LEA under State law.

**Elementary school.** The term ‘elementary school’ means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law, 34 CFR §300.13. An elementary school includes a grade configuration of grades one (1) through eight (8) inclusive, or any combination thereof, Idaho Code 33-119.

**Emotional disturbance.** An IDEA 2004 disability category in which a student has a condition exhibiting one or more of five behavioral or emotional characteristics over a long period of time, and to a marked degree, that adversely affects educational performance. The term *does not* include students who are socially maladjusted unless it is determined they have an emotional disturbance. The term emotional disturbance *does* include students who are diagnosed with schizophrenia.

**Essential Components of Reading Instruction.** The term means explicit and systematic instruction in (a) phonemic awareness, (b) phonics, (c) vocabulary development, (d) reading fluency, including oral reading skills, and (e) reading comprehension strategies.

**Evaluation.** A term that means using all required procedures to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

**Evaluation Eligibility/evaluation team.** A group of people, including the ~~parent and or adult student~~ parent/adult student, charged with the responsibility to make decisions regarding evaluation, assessments, and eligibility. This team includes the same membership as the IEP team (although not necessarily the same individuals) and other qualified professionals as appropriate. ~~The evaluation team may conduct its business with or without a meeting. However, if requested by the parent and or adult student, a team meeting will be held~~

**Expedited due process hearing.** An administrative hearing conducted by an SDE-appointed hearing officer to resolve disputes concerning discipline for which shortened timelines are in effect in accordance with the IDEA 2004.

**Expulsion.** Removal of a student from school for an extended period of time. For general education students, services usually cease during an expulsion.

**Extended school year (ESY).** A program to provide special education and related services to an eligible student with a disability beyond the conventional number of instructional days in a school year and at no cost to the parents. An ESY program must be based on an IEP team decision and meet Idaho standards.

**Extracurricular activities.** Programs sponsored by a district that are not part of the required curriculum but are offered to further the interests and abilities of students.

**FAPE** (~~see~~ See “Free appropriate public education”)

**FERPA** (~~see~~ See “Family Educational Rights and Privacy Act”)

**Facilitation.** A voluntary process during which a neutral and impartial individual, contracted by the SDE, is appointed to conduct an IEP Team or other special education related meeting.

**Family Educational Rights and Privacy Act (FERPA).** A federal law protecting the privacy of students and parents by mandating that personally identifiable information about a student contained in education records must be kept confidential unless otherwise provided by law. FERPA also contains provisions for access to records by parents, students, staff, and others.

**Fluency disorder.** Stoppages in the flow of speech that are abnormally frequent and/or abnormally long. These interludes take the form of repetitions of sounds, syllables, or single syllable words; prolongations of sounds; or blockages of airflow and/or voicing in speech.

**Free Appropriate Public Education (FAPE).** A basic IDEA 2004 requirement which states that special education and related services are provided at public expense (free); in conformity with an appropriately developed IEP (appropriate); under public supervision and direction (public); and include preschool, elementary, and secondary education that meets the education standards, regulations, and administrative policies and procedures issued by the State Department of Education (education).

**Functional achievement and performance.** Gains made by a student which include programming in community living, reading, communication, self-care, social skills, domestic maintenance, recreation, employment or vocational skills. Also called independent living skills.

**Functional behavioral assessment (FBA).** A systematic process for defining problem behavior and gathering medical, environmental, social, and instructional information that can be used to hypothesize about the function of student behavior.

**General education curriculum.** The curriculum that is designed for all students, usually consisting of a common core of subjects and curriculum areas adopted by a district that are aligned to the Idaho Achievement Standards or district standards. The general education curriculum is defined by either the Idaho Achievement Standards or the district content standards if they are as rigorous.

**General education interventions.** Educational interventions designed to address ~~95%~~ of the students using the core and supplemental ~~curriculum~~ interventions. Such interventions ~~use~~ may include whole-school approaches, scientifically based programs, and positive behavior supports, including accommodations and instructional interventions conducted in the general education environment. These interventions may also include professional development for teachers and other staff to enable such personnel to deliver scientifically based literacy instruction and/or instruction on the use of adaptive and instructional software.

**Goal.** A measurable statement of desired progress, ~~that includes behavior, evaluation procedures and performance criteria and describes what the student is reasonably expected to accomplish from the specialized education program within the time covered by the IEP (generally one year).~~ In an IEP, annual goals must include academic and functional goals designed to meet a child's needs that result from his or her disability, enable the child to be involved in and make progress in the general curriculum, and meet the child's other educational needs that result from the child's disability.

**Graduation.** The point in time when a student meets the district requirements for receipt of a regular high school diploma.

**Guardianship.** A judicial determination under which a competent adult has the legal right and duty to deal with problems, make decisions, and give consent for an adult with a disability (at least eighteen (18) years of age) who cannot act on his or her own behalf. The court will specify the nature and scope of the guardian's authority.

**~~Gun-Free Schools Act.~~** ~~Federal legislation enacted in 1994 requiring school districts and similar public agencies to adopt a policy generally requiring the expulsion from school for a period of not less than one year of any student determined to have brought a weapon to school, although permitting exceptions to be made on a case-by-case basis for students, including students with disabilities whose behavior is determined to be a manifestation of their disability.~~

**Health impairment.** ~~An IDEA 2004 disability category in which a student exhibits limited strength, vitality or alertness, including heightened alertness to environmental stimuli that is due to chronic or acute health problems (such as asthma, ADD or ADHD, cancer, diabetes, epilepsy, Fetal Alcohol Syndrome, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, Tourette syndrome and stroke) to such a degree that it adversely affects the student's educational performance.~~

**Health services.** See "School health services".

**Hearing impairment.** ~~An IDEA 2004~~ disability category in which a student has a permanent or fluctuating hearing loss that adversely affects the student's educational performance but is not included under the category of deafness. Also referred to as hard of hearing.

**Highly objective uniform state standard of evaluation (HOUSSE).** A rubric developed by the State Department of Education that can be used by a district as one way to determine if a teacher meets the federal definition of being “highly qualified” to teach in a given core academic subject and grade level designation.

**Highly qualified.** The standard which personnel (who teach core academic subjects) must possess with the appropriate certification, endorsement, licensure, coursework, training, skills and qualifications to provide educational services to students.

**High school.** ~~A high school is any school that contains grade twelve (12). IDAPA 08.02.03 e.iii.~~ Idaho Statute 33-119 defines secondary school as grades seven (7) through twelve (12) inclusive of any combination thereof. See secondary school.

**Homebound student.** A student whose IEP team determines the child’s home is the least restrictive environment.

**Homeless children and youth.** Children and youth who lack a fixed, regular, and adequate nighttime residence as defined in the McKinney-Vento Homeless Assistance Act.

**Homeschool.** An education program delivered by parents who have decided to provide instruction in the home and not in a public or private school. A homeschool is a nonpublic school, but is not considered a private school. A virtual public school is not a homeschool.

**Homeschooled students.** A homeschooled student is one whose parents have decided to provide an educational program in the home with instruction provided by the parents. A homeschool student is considered a nonpublic school student, but is not considered a private school student. A student who is enrolled in a virtual public school is not considered a homeschooled student for the duration that they attend that virtual public school.

**Honig Injunction.** A court order to remove a special education student from school or current educational placement due to factors of dangerousness. Districts are required to continue with the provision of FAPE.

**Idaho core standards.** Educational standards detailing what K-12 students should know at the end of each grade and establishing consistent standards across the states, as well as ensuring that students graduating from high school are prepared to enter credit-bearing courses at two- or four-year college programs or enter the workforce. The educational standards were sponsored by the National Governors Association (NGA) and the Council of Chief State School Officers (CCSSO)



**Illegal use of drugs.** The unlawful use, possession or distribution of substances identified under the Controlled Substances Act, but does not include the use of a drug taken under supervision by a licensed health care professional.

**Independent educational evaluation (IEE).** One or more assessment(s) conducted by a qualified examiner(s) who is not employed by or contracted by the public agency or district responsible for the education of the student in question.

**Individualized education program (IEP).** A written document (developed collaboratively by an IEP team made up of parents and school personnel) which outlines the special education program for a student with a disability. This document is developed, reviewed and revised at an IEP meeting at least annually.

**Individualized education program (IEP) team.** A team established by the IDEA ~~2004~~ and comprised but not limited to ~~of~~ the student's general education teacher, a special education teacher, a district representative, parents, the student when appropriate, and other knowledgeable persons. The team is responsible for developing an IEP, determining placement, and reviewing and revising the student's IEP and placement at least annually.

**Individualized family service plan (IFSP).** A written individualized plan for an infant or toddler (birth to three (3) years of age) with a disability that is developed by a multidisciplinary team, including the parents, under Part C of the IDEA ~~reference Public Law 108-446, Section 636(C).~~

**Individuals with Disabilities Education Act(IDEA).** A federal law ensuring services to children with disabilities. The IDEA governs how states and public agencies provide early intervention, special education and related services to individuals with disabilities. Infants and toddlers with disabilities (birth to two) and their families receive services under IDEA Part C. Children and youth (ages three (3) to twenty-one (21) receive special education and related services under IDEA Part B.

**Initial provision of service.** The first time that a child with a disability is provided special education and related services. This is also referred to as the "initial placement" and means the first time a parent is offered special education and related services for their child after an initial evaluation and eligibility determination.

**In-lieu of transportation.** Alternate method of transporting students to and from school.

**~~In-school suspension.~~** ~~A disciplinary technique, considered a less restrictive alternative to sending a student home, that involves excluding the student from the regular classroom and assigning him or her to a temporary location where students work and receive a minimum amount of privileges.~~

**Instructional intervention.** An action or strategy based on an individual student's problem that is designed to remedy, improve, or eliminate the identified problem.

**Intellectual disability. ~~Cognitive impairment~~**—An IDEA 2004 disability category in which significant sub-average general intellectual functioning exists concurrently with deficits in adaptive behavior. These deficits are manifested during the student’s developmental period and adversely affect the student’s educational performance. The terms “mental retardation” and “cognitive impairment” were previously used to refer to this condition.

**Intensive Behavioral Intervention (IBI).** ~~Individualized, comprehensive, proven interventions used on a short term, one to one basis that produce measurable outcomes which diminish behaviors that interfere with the development and use of language and appropriate social interaction skills or broaden an otherwise severely restricted range of interest. Students who may be eligible for IBI display self-injurious, aggressive or severely maladaptive behavior and severe deficits in the areas of verbal and nonverbal communication, social interaction or leisure and play skills.~~

**Interagency agreement.** A written document that defines the coordination between the state and/or public/private agencies and/or districts with respect to the responsibilities of each party for providing and funding special education programs and special education and related services.

**Interim alternative educational setting (IAES).** The educational setting in which a district may place a student with a disability, for not more than forty-five (45) school days, if the student while at school, on school premises or at a school function carries a weapon or possesses a weapon; knowingly possesses, uses, sells or solicits the sale of illegal drugs or controlled substances; or has inflicted serious bodily injury upon another person. An IAES may also be ordered by a due process hearing officer based upon evidence that maintaining the current placement is substantially likely to result in injury to the student or others.

**Interim IEP.** A short-term IEP with all the components of a standard IEP developed by the IEP team. It may be used for students transferring from other districts pending the development of the standard IEP or other purposes as needed.

**Interpreting services.** The process of providing accessible communication between and among persons who are deaf, hard of hearing, or deaf-blind, and those who are hearing. The process includes, but is not limited to, communication between American sign language or other form of manual communication and English. The process may also involve various other modalities that involve visual, gestural and tactile methods including Oral oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell. ~~and special interpreting services for children who are deaf blind (34 CFR §34.4.i)~~

**Intervention plan (I-Plan).** An individual intervention plan designed by a general education team to improve a student’s academic performance or behavior through general education

interventions. This plan must be documented, and include the development, implementation and monitoring of the plan.

**Itinerant specialist.** A teacher who normally travels and provides services to students in different schools or in the home or consults with teachers and administrators.

**Joint custody.** A court order awarding custody of a minor child to both parents and providing that physical and/or legal custody shall be shared by the parents.

**Joint legal custody.** A court order providing that the parents of a child are required to share the decision-making rights, responsibilities, and authority relating to the health, education, and general welfare of the child.

**Joint physical custody.** A court order awarding each of the parents significant periods of time in which a child resides with or is under the care and supervision of each of the parents. The actual amount of time is determined by the court.

**Language impairment.** An IDEA 2004 disability category in which a delay or disorder exists in the development of comprehension and/or the uses of spoken or written language and/or other symbol systems and which adversely affects the student's educational performance. A language impairment may involve any one or a combination of the following: the form of language (morphological and syntactic systems); the content of language (semantic systems); and/or the function of language in communication (pragmatic systems).

**Learning disability.** ~~See "specific learning disability" An IDEA 2004 disability category in which a specific disorder of one or more of the basic psychological processes involved in understanding or in using spoken or written language may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or do mathematical calculations, adversely affecting the student's educational performance. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia. The term does not include a student who has needs that are primarily the result of visual, hearing, or motor disabilities; cognitive impairment; emotional disturbance; or environmental, cultural, or economic disadvantage.~~

**Least restrictive environment (LRE).** The IDEA 2004 requirement that students with disabilities, including those in public or private institutions or other care facilities, be educated with students who are nondisabled to the maximum extent appropriate.

**Limited English proficient (LEP).** ~~Students~~ An individual aged three (3) to twenty-one (21), who is enrolled or preparing to enroll in elementary or secondary school, and from language backgrounds other than English who need language assistance services in their own language or in English in the schools and who meets one or more of the following conditions: (1) the student was born outside of the United States or his or her native language is not English; (2) the student comes from an environment where a language other than English is dominant; or (3) the student is American Indian or Alaskan Native and comes from an environment where a language other than English has had a

significant impact on his or her level of English language proficiency. The student also has sufficient difficulty speaking, reading, writing, or understanding the English language to deny him or her the opportunity to learn successfully in English-only classrooms. he or she was not born in the United States or his or her native language is a language other than English; he or she is a Native American or Alaska Native, or a native resident of the outlying areas; he or she comes from an environment where a language other than English has had a significant impact on the individuals level of English language proficiency; or the individual is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant. The LEP individual's difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the him or her the ability to meet the State's proficient level of achievement on State assessments; the ability to successfully achieve in classrooms where the language of instruction is English; or the opportunity to participate fully in society.

**Listening comprehension.** For the purpose of specific learning disability eligibility, refers to the understanding of the implications and explicit meanings of words and sentences of spoken language. This includes following directions, comprehending questions, and listening and comprehending in order to learn (e.g., auditory attention, auditory memory, and auditory perception). Listening comprehension also includes the ability to make connections to previous learning.

**Local district.** See “district” and “local educational agency (LEA)”

**Local educational agency (LEA).** A public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools. See “district”

**Manifestation determination.** A determination by the parent and relevant members of the IEP team of whether the conduct in question was caused by or had a direct and substantial relationship to the student's disability or if the conduct in question was the direct result of the LEA's failure to implement the IEP. or not the misconduct of a student with a disability was (1) a demonstration of the disability, that is, an inability to understand impact and consequences or an inability to control behavior; (2) the result of an inappropriate placement; and/or (3) the lack of provision of services consistent with the IEP and placement.

**Mathematics calculation.** For the purpose of specific learning disability eligibility, this refers to the knowledge and retrieval of mathematical facts and the application of procedural knowledge in computation.

**Mathematics problem solving.** For the purpose of specific learning disability eligibility, refers to the ability to apply mathematical concepts and understandings to real-world situations, often through word problems. It is the functional combination of computation knowledge and application knowledge, and involves the use of mathematical computation skills and fluency, language, reasoning, reading, and visual-spatial skills in solving problems. Essentially, it is applying mathematical knowledge at the conceptual level.

**McKinney-Vento Homeless Assistance Act.** This law is designed to address the problems that homeless children and youth have faced in enrolling, attending, and succeeding in school. Under this law program, state educational agencies (SEAs) must ensure that each homeless child and youth has equal access to the same free, appropriate public education, including a public preschool education, as other children and youth.

**Mediation.** A voluntary, informal confidential, and structured process during which in which an SDE-contracted individual is appointed to serve as an impartial and neutral third party mediator to help parents and district or agency personnel resolve an IDEA-related conflict. Mediation usually results in a written, legally-binding agreement that is mutually acceptable to both parties and enforceable in court.

**Medicaid services (school-based).** Those ~~related~~ services, assessment and plan development for students receiving Medicaid which school districts may bill for reimbursement with the consent of the parent.

**Medical services.** Medical services means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services, ~~as defined in 34 CFR §300.34(e)(5).~~

**Middle school.** A middle school is a school that does not meet the definition of an elementary school and contains grade eight (8) but does not contain grade twelve (12). ~~IDAPA 08.02.03 c.ii.~~

**Migrant student.** A student of ~~compulsory school attendance age~~ who has not graduated from high school or completed a high school equivalency certificate and resides within a family that is composed of migrant fisher or agricultural workers. The student has moved within the preceding thirty-six (36) months in order for the family to obtain or seek this type of temporary or seasonal employment that is a principal means of livelihood.

**Modification.** Changes in course content, teaching strategies, standards, test presentation, location, timing, scheduling, expectations, student responses, environmental structuring, and/or other attributes which provide access for a student with a disability to participate in a course/standard/test, which fundamentally alters or lowers the standard or expectations of the course/standard/test.

**Monitoring.** An activity conducted by the State Department of Education to review a school district's compliance with federal laws, regulations, and state rules.

**Multiple disabilities.** An IDEA 2004 disability category in which two or more impairments co-exist (excluding deaf-blindness), whose combination causes such severe educational needs ~~problems~~ that the student cannot be accommodated in special education services designed solely for one of the impairments. ~~Multiple disabilities are generally lifelong, significantly interfere with independent functioning, and may necessitate environmental accommodations and adaptations to enable the student to participate in school and society.~~

**Multi-tiered system of support (MTSS).** A systemic educational practice of matching educational instruction and interventions to the needs of students. MTSS is a data-driven model involving frequent monitoring of student progress to determining if interventions are needed to improve individual student outcomes using evidenced-based practices.

**Native language.** The language or mode of communication normally used by an individual or, in the case of a student, the language normally used by the student's parents. In all direct contact with a student, the native language would be the language or mode of communication normally used by the student in the home or learning environment ~~and not the parents, if there is a difference between the two.~~

**New teacher.** A teacher who has less than one (1) year of teaching experience.

**Nonpublic school.** An educational institution or program providing instruction outside a public school, including but not limited to a private school or homeschool.

**Nonpublic ~~school~~ student.** Any student who receives educational instruction outside of a public school ~~classroom~~, including but not limited to a private school or homeschool student.

**Nonprofit.** The term 'nonprofit', as applied to a school, agency, organization, or institution, means a school, agency, organization, or institution owned and operated by one (1) or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual; ~~Public Law 108-446, Section 602 (21).~~

**Nursing services.** See "School health services"

**Objectives.** Measurable, intermediate steps that describe the progress the student is expected to make toward an annual goal in a specified amount of time; similar to a benchmark.

**Occupational therapist.** A professional licensed through the Bureau of Occupational Licenses who, in a school setting, is responsible for assessing fine motor skills, including student's use of hands and fingers and developing and implementing plans for improving related motor skills. The occupational therapist focuses on daily living skills such as eating, dressing, schoolwork, play, and leisure.

**Office of special education programs (OSEP).** The branch of the Office of Special Education and Rehabilitative Services (OSERS) within the U.S. Department of Education which is responsible for administering programs relating to the free appropriate public education to all eligible beneficiaries under the IDEA.

**Oral expression.** For the purpose of specific learning disability eligibility, the ability to convey wants, needs, thoughts, and ideas in a meaningful way using appropriate syntactic, pragmatic, semantic, and phonological language structures. It relates to a student's ability to express ideas, explain thinking, retell stories, categorize, and compare and contrast concepts or ideas, make references, and problem solve verbally.

**Orientation and mobility (O&M) services.** Services provided by qualified personnel to blind and visually impaired students by qualified personnel to enable these students to attain systematic orientation to and safe movement within the home, school, and community, including teaching (1) spatial and environmental concepts and use of information received by the senses to establish, maintain, or regain orientation and line of travel; (2) use of the long white cane, or a service animal, as appropriate to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision; (3) understanding and use of remaining vision and distance low vision aids; and (4) other concepts, techniques, and tools.

**Orthopedic impairment.** An IDEA 2004 disability category that includes severe orthopedic physical impairments that adversely affects a student's educational performance and are caused by congenital anomaly (e.g., clubfoot, absence of an appendage, etc.); disease (e.g., poliomyelitis, bone tuberculosis, etc.); or from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contracture).

**Other health impairment (OHI).** An IDEA 2004 disability category in which a student exhibits limited strength, vitality or alertness, including heightened alertness to environmental stimuli that results in limited alertness with the respect to the educational environment that is due to chronic or acute health problems (such as asthma, ADD or ADHD, cancer, diabetes, epilepsy, Fetal Alcohol Syndrome, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, Tourette syndrome and stroke) to such a degree that it adversely affects the student's educational performance.

**Paraprofessional.** A noncertified, non-licensed individual who is employed by a district and who is appropriately qualified, trained, and supervised in accordance with state standards to assist in the provision of special education and related services.

**Parent.** ~~A biological, adoptive or foster parent, a legal guardian, a person acting as a parent, or a surrogate parent who has been appointed by the district. The term "acting as a parent" includes persons such as a grandparent or stepparent with whom the student lives as well as persons who are legally responsible for a student's welfare. The term does not include state agency personnel if the student is a ward of the state. A foster parent may act as a~~

~~parent if the biological parent's authority to make education decisions on behalf of his or her child has been terminated by legal action and the foster parent meets the criteria outlined in Chapter 11.~~

**Parent and/or Adult student.**

- 1) A biological or adoptive parent of a child;
- 2) A foster parent who has lived with the child for six (6) or more months;
- 3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);
- 4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
- 5) A surrogate parent who has been appointed by the school district. If the child is a ward of the state, the judge overseeing the child's case may appoint the surrogate. The surrogate may not be an employee of the state or local education agency or any other agency that is involved in the education or care of the child, has no personal or professional interest which conflicts with the interest of the child, has knowledge and skills that ensure adequate representation of the child.

**Part B.** Part of the IDEA 2004 that relates to the assistance to states for the education of students with disabilities who are ages three (3) through the semester in which a student turns twenty-one (21). Part B is administered by the State Department of Education and carried out by school districts and other public agencies.

**Part C.** Part of the IDEA 2004 that relates to the assistance to states for the education of children with disabilities and the early intervention programs for infants and toddlers, ages birth through two (2), with disabilities. In Idaho, Part C is administered by the Department of Health and Welfare.

**Peer-reviewed research.** A higher level of non-biased research, which has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective and scientific review.

**Personally identifiable information.** Includes but not limited to, student's name, name of parent or other family member, address of student or family, social security number, student number, list of personal characteristics ~~that would make the student's identity~~, or other information that would make it possible to identify the student with reasonable certainty.

**Phonology.** The process used in our language that has common elements (sound patterns) which affect different sounds.



**Phonology disorders.** Phonology disorders are errors involving phonemes, sound patterns and the rules governing their combinations.

**Physical therapist.** A professional licensed through the Bureau of Occupational Licenses who, in the school setting, assesses students' needs and provides interventions related to gross motor skills. In working with students with disabilities, the physical therapist provides treatment to increase muscle strength, mobility, endurance, physical movement and range of motion; improve posture, gait and body awareness; and monitor function, fit and proper use of mobility aids and devices.

**Plan for improving results (PIR).** A plan developed collaboratively between the SDE and a district to address needs identified as a result of the district's self-evaluation and/or an SDE monitoring visit.

**Positive behavioral intervention and supports (PBIS).** Positive reinforcers, rewards or consequences provided to a child for specific instances of behavior that impedes learning or the learning of others (or refraining from behavior) as appropriate for the purpose of allowing the student to meet his or her behavioral goals/benchmarks.

**Power of attorney.** The designation, in writing, by a competent person of another to act in place of or on behalf of another person.

**Present level of performance (PLOP) or Present levels of academic achievement and functional performance (PLAAFP).** Used interchangeably, this is a statement of the student's current level of achievement or development in an area of need and how the student's disability affects his or her involvement and progress in the general education curriculum offered to students without disabilities. For preschool students, as appropriate, how the disability affects the child's participation in appropriate activities.

**Private school.** A nonpublic school that is not funded by or under federal or state control or supervision. A homeschool is not a private school.

**Private school student.** Any student who receives educational instruction in a school not funded by or under federal or state control or supervision is considered a nonpublic private school student. A homeschool student is not a private school student.

**Problem-solving team.** A general education team established at the local level, whose name may vary, with the purpose to problem solve regarding the educational needs of any student. Procedures, meeting schedules, and team membership are established locally. The team is likely to include general educators and administrators and could include counselors, specialists, and special education personnel. Parent participation is valuable, but not required.

**Procedural safeguards.** The ~~formal~~ requirements of Part B of the IDEA 2004 that are designed to allow a parent/adult student to participate meaningfully in decisions concerning an

appropriate educational program for a student with a disability and, if necessary, dispute such decisions. Also referred to as special education rights.

**Professional development.** High-quality comprehensive programs that are essential to ensure that persons responsible for the education or transition of students with disabilities possess the skills necessary to address the educational and related needs of these students. These should be scientifically-based and reflect successful practices including strategies for recruiting, hiring, preparing and retaining personnel.

**Psychosocial rehabilitation (PSR).** These services assist the student in gaining and utilizing skills necessary to participate in school, such as training in behavior control, social skills, communication skills, appropriate interpersonal behavior, symptom management, activities of daily living, study skills, and coping skills. This service is to prevent placement of the student into a more restrictive educational situation.

**Public expense.** When a district or public agency either pays for the full cost of an evaluation or special education services or ensures that it is otherwise provided at no cost to the parent; for example, through joint agreements with other state agencies.

**Reading components.** The term “reading” means a complex system of deriving meaning from print that requires all of the following skills, which are the essential components of reading instruction:

- 1) Phonemic awareness: The skills and knowledge to understand how phonemes, or speech sounds, are connected to print;
- 2) Phonics: The ability to decode unfamiliar words;
- 3) Reading fluency: The ability to read fluently;
- 4) Vocabulary development: Sufficient background information and vocabulary to foster reading comprehension; and
- 5) Reading comprehension: The development of appropriate active strategies to construct meaning from print.

**Reading comprehension.** For the purpose of specific learning disability eligibility, refers to the ability to understand and make meaning of written text and includes a multifaceted set of skills. Reading comprehension is influenced by oral language development including new vocabulary acquisition, listening comprehension, working memory, application of comprehension-monitoring strategies, and understanding of text structure including titles, paragraphing, illustrations, and other details. Reading comprehension is significantly affected by basic reading skills.

**Reading fluency.** For the purpose of specific learning disability eligibility, refer to the ability to read words and text accurately, using age-appropriate chunking strategies and a repertoire of sight words, and with appropriate rate, phrasing, and expression (prosody). Reading fluency facilitates reading comprehension.

**Reasonable measures.** A combination of recorded written and/or oral documentation to meet notification requirements of the district to parents/adult students.

**Reasonable time.** A period of ~~approximately ten (10)~~ calendar days unless there are exceptional circumstances that warrant a shortened period of time such as an emergency or disciplinary meeting.

**Reevaluation.** A periodic evaluation conducted at least every three years, or more frequently if conditions warrant, or if the student's parent or teacher requests an evaluation of a student already identified as eligible for services under the IDEA 2004. Reevaluations may occur not more than once a year, unless the parent and the district agree otherwise- or may be waived by the parent and LEA.

**Related services.** Refers to transportation and such developmental, corrective, and other supportive services required to assist a student with a disability to benefit from special education and includes the following: speech therapy, language therapy, audiology services, psychological services, physical therapy, occupational therapy, recreation, therapeutic recreation, early identification and assessment of disabilities in children, counseling services, rehabilitation counseling, orientation and mobility services, interpreting services, medical services for diagnostic or evaluation purposes, school health/nursing services (excluding surgically implanted medical devices), social work services in schools, and parent counseling and training.

**Response to intervention (RTI).** A formal process for evaluating student response to scientifically research-based interventions, consisting of the core components of: (1) problem identification, (2) problem analysis, (3) applying research-based interventions, and (4) progress monitoring/decisions rules. As used in the IDEA, RTI is only mentioned as an alternative to the severe discrepancy criteria in determining whether a student has a SLD.

**Resolution session.** A ~~preliminary~~ meeting involving the parents, relevant members of the IEP team, and a representative of the district who has decision-making authority, required prior to a due process hearing if the parent has requested the due process hearing.

**School-age.** Includes all persons between the ages of five (5) (i.e., turns five (5) on or before September 1) and through twenty-one (21) years who reside in Idaho. For students with disabilities who qualify for special education and related services under the IDEA 2004, school-age begins at age three (3) and continues through the semester of school in which the student attains the age of twenty-one (21).

**School day.** Any day, including a partial day, ~~that~~ when students are in attendance at school for instructional purposes.

**School health services.** School health services and school nurse services means health services that are designed to enable a child with a disability to receive FAPE as described in the

child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

**School psychologist.** A professional who holds an Idaho Pupil Personnel Services Certificate with an endorsement in Psychology and is charged with the responsibility to conduct assessments and determine a student's cognitive, academic, social, emotional, and/or behavioral functioning. This professional also provides direct services to students, consults with district staff, and may be a member of the evaluation and/or IEP team.

**Scientifically-based research (SBR).** ~~The term scientifically-based research means research that applies rigorous, systematic, and objective procedures to obtain valid knowledge relevant to core academic development, instruction, and difficulties; and includes research that: (a) employs systematic, empirical methods that draw on observation or experiment; (b) involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn; (c) relies on measurements or observational methods that provide valid data across evaluators and observers and across multiple measurements and observations; and (d) has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.~~ Scientifically based research (as defined in the ESEA) means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and includes research that (a) employs systematic, empirical methods that draw on observation or experiment; (b) involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn; (c) relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators; (d) is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls; (e) ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and (f) has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

**Screening.** An informal, although organized process, of identifying students who are not meeting or who may not be meeting Idaho Content Standards or Idaho Common Core Standards.

**Secondary school.** The term 'secondary school' means a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that it does not include any education

beyond grade 12, ~~34 CFR §300.36~~. The term ‘secondary school’ is not defined in Idaho Code. See “high school”.

**Section 504 of the Rehabilitation Act of 1973.** A federal law designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the U.S. Department of Education (ED). Section 504 provides: "No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . . ."

**Secular.** An adjective used to describe a private, non-religious educational entity.

**Serious bodily injury (SBI).** Bodily injury which involves (a) a substantial risk of death; (b) extreme physical pain; (c) protracted and obvious disfigurement; or (d) protracted loss or impairment of the function of bodily member, organ, or mental faculty.

**Services plan (SP).** Services plan means a written statement that describes the special education and related services the LEA will provide to a parentally-placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, ~~consistent with Section 34 CFR §300.132, and is developed and implemented in accordance with Sections 34 CFR §300.137 through 34 CFR §300.139, 34 CFR §300.37.~~

**Setting.** The location where special education services occur.

**Social worker.** A professional who holds an Idaho Pupil Personnel Services Certificate with an endorsement in Social Work and helps students and teachers address social and emotional issues. This professional may be a member of the evaluation and/or IEP team.

**Socially maladjusted.** A child who has a persistent pattern of violating societal norms with truancy, substance abuse, a perpetual struggle with authority, is easily frustrated, impulsive, and manipulative, ~~Doe v. Board of Education of the State of Connecticut, (D. Conn. Oct. 24, 1990).~~

**Special education.** Specially designed instruction or speech/language therapy at no cost to the parent to meet the unique needs of a student with a disability including instruction in the classroom, the home, hospitals, institutions, and other settings; instruction in physical education; speech therapy and language therapy; transition services; travel training; assistive technology services; and vocational education.

**Special educational placement.** Refers to the provision of special education services along the continuum of placements under the least restrictive environment requirements, rather than a specific place or location, such as a specific classroom or school. The balance of setting and services to meet an individual student’s needs.

**Specially designed instruction.** Adapting the content, methodology, or delivery of instruction to address the unique needs of an eligible student that result from the student's disability and to ensure access to the general education curriculum so that the student can meet the education standards of that district that apply to all students.

**Specific learning disability (SLD).** A disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific Learning Disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage. Only children within the age range of legal Kindergarten to age twenty-one (21) years may be identified as a student with a specific learning disability.

**Speech impairment.** An IDEA 2004 disability category that includes articulation/phonology, voice, and fluency disorders. A speech-language disorder, such as speech fluency, impaired articulation/phonology, a language impairment, or a voice impairment that adversely affects a student's educational performance.

**Speech-language pathologist.** A professional holding an Idaho Pupil Personnel Services Certificate who can assess and treat persons with speech, language, voice, and fluency disorders. This professional coordinates with and may be a member of the evaluation and IEP teams.

**Student (school-age).** For resident children with disabilities who qualify for special education and related services under the federal individuals with disabilities education act (IDEA) and subsequent amendments thereto, and applicable state and federal regulations, "school-age" shall begin at the attainment of age three (3) and shall continue through the semester of school in which the student attains the age of twenty-one (21) years.

**Stay put.** A requirement that a district or agency maintain a student with a disability in his or her present educational placement while a due process hearing or subsequent judicial proceeding is pending unless the parties agree otherwise.

**Substantial evidence.** A legal term that means "beyond a preponderance of the evidence" or "beyond more likely than not".

**Summary of performance (SOP).** A document given to secondary students when a student exits special education as a result of earning a diploma or aging out. This document describes the academic achievement and functional performance along with recommendations to assist the student in meeting post-secondary goals.

**~~Supplementary aids and services.~~** ~~Accommodations and adaptations that must be made to the general education classroom and/or curriculum to ensure the satisfactory participation of~~

~~a student with a disability, including supports to the general education teacher.~~  
Supplementary aids and services means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate.

**Surrogate parent.** An individual assigned and trained by a district or an agency to assume the rights and responsibilities of a parent under the IDEA 2004 when no parent can be identified or located for a particular student or when the child is a ward of the state.

**Suspension.** A temporary stop, delay, interruption, or cessation of educational services due to a violation of the student conduct code. This may include in-school suspension.

**Traditional public school.** "Traditional public school" means any school existing or to be built that is operated and controlled by a school district in this state, Idaho Statute, Chapter 33-5202A(7).

**Transition services.** A coordinated set of activities for a student with a disability designed within a ~~results outcome~~-oriented process focused on improving the academic and functional achievement of the student to facilitate the student's movement from school to post-school activities. Services are based on individual student needs addressing instruction, related services, community experiences, employment, post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

**Traumatic brain injury (TBI).** An IDEA 2004 disability category that refers to an injury to the brain caused by an external physical force and resulting in a total or partial functional disability or psychosocial impairment, or both, that adversely affects educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas such as cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem solving, sensory perception and motor abilities, psychosocial behavior, physical functions, information processing, and speech. The term does not apply to congenital or degenerative brain injuries or to brain injuries induced by birth trauma.

**Travel training.** Instruction to students with significant cognitive disabilities and any other students with disabilities who require instruction to enable them to develop an awareness of the environment in which they live and to learn the skills necessary to move effectively and safely from place to place within the home, school, and community.

**Twice exceptional.** Twice exceptional students are identified as gifted and talented in one or more areas of exceptionality (specific academics, general intellectual ability, creativity, leadership, visual or performing arts) and also identified with a disability defined by State eligibility criteria (LD, ED, Autism, Orthopedic Impairments, or ADHD) that qualifies the student for an IEP or a 504 plan.

**Unilateral placement.** A decision by a parent, at his or her own discretion, to remove his or her child with a disability from a public school and enroll the student in a private facility because the parent believes that the district did not provide FAPE in a timely manner.

**Universal design.** A concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly usable (without requiring assistive technologies) and products and service that are made usable with assistive technologies.

**Visual impairment including blindness.** An IDEA 2004 disability category characterized by an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes partial sight, ~~which refers to the ability to use vision as one channel of learning if educational materials are adapted,~~ and blindness, ~~which refers to the prohibition of vision as a channel of learning, regardless of the adaptation of materials.~~

**Voice disorder.** (See "speech impairment") ~~An IDEA 2004 disability category that refers~~ Refers to the absence or abnormal production of voice quality, pitch, intensity, or resonance. Voice disorders may be the result of a functional or an organic condition.

**Voluntary enrollment in a private placement.** Enrollment by a parent of a student with a disability in a private facility or homeschool for religious, philosophical, curricular, or other personal reasons.

**Ward of the state.** A child who, as determined by the State where the child resides, is a foster child (unless the foster parent meets the definition of a parent in Section 34 CFR §300.30), a ward of the State, or in the custody of a public child welfare agency.

**Weapon.** ~~(See "Dangerous dangerous Weapons-weapon")~~

**Written expression.** For the purpose of specific learning disability eligibility, the processes related to the transcription of ideas and thoughts into a written product, such as handwriting and spelling. It also involves generative processes such as the communication of ideas, thoughts, and feelings. Required skills include using oral language, thought, grammar, text fluency, sentence construction, and planning to produce a written product.

**Written notice.** A written statement provided by the district to a parent/adult student within a reasonable amount of time before proposing or refusing to initiate or change to the identification, evaluation, educational placement, or the provision of FAPE.



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**CHAPTER 1 OVERVIEW  
LEGAL CITATIONS**

<b>Section</b>	<b>Topic</b>	<b>IDEA Regulations 34 CFR §</b>	<b>Idaho Code/IDAPA/Legal Authority</b>
1.	Child Find	300.111	IDAPA 08.02.03.109.02.a IDAPA 08.02.03.109.02.d
2.	Procedural Safeguards	<u>300.121</u> 300.504	IDAPA 08.02.03.109.05
3.	Student Eligibility under the IDEA 2004	300.8 300.122	Idaho Code 33-2001(3) Idaho Code 33-2001(5) IDAPA 08.02.03.109.03 <del>IDAPA 08.02.03.109.01.g</del>
4.	Free Appropriate Public Education ( <u>FAPE</u> )	300.17 300.101-300.102 300.148 <del>300.304</del>	Idaho Code 33-201 Idaho Code 33-2002 <del>Idaho Code 33-2009</del> Idaho Code 33-2010 Idaho Code 20-504a(3) <del>IDAPA 08.02.03.109.02.e</del> <u>IDAPA 08.02.03.109.02.a</u>
5. <del>5A</del> <del>5B</del> <del>5C</del>	District Programs and Services <del>Educational Programs &amp; Services</del> <del>Physical Education</del> <del>Nonacademic &amp; Extracurricular Services and Activities</del>	<u>300.107-300.110</u> <del>300.108</del> <del>300.107</del> 300.117	Idaho Code 33-2002
6.	Individualized Education Program ( <u>IEP</u> )	300.22 <del>300.320-300.328</del>	IDAPA 08.02.03.109.04
7.	Least Restrictive Environment ( <u>LRE</u> )	300.114-300.120	IDAPA 08.02.03.109.04.c
8. <del>8A</del> <del>8B</del>	Summary of Activities that May Lead to Special Education Services <del>General Education Interventions</del>	<u>300.102(a)</u> <u>300.112</u> <u>300.116</u> <del>300.300-300.307</del> <del>300.309-300.311</del>	<del>IDAPA 08.02.03.109.02.i</del> <u>IDAPA 08.02.03.109.02.h</u> Idaho Code 33-2002

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8C	<del>Referral to Consider a Special Education Evaluation</del>	<del>300.320-300.324</del>	<del>IDAPA 08.02.03.109.03</del>
	<del>Written Notice and Consent</del>	<del>300.503-300.504</del>	<del>IDAPA 08.02.03.109.04</del>
8D		<del>300.622</del>	
	<del>Evaluation &amp; Eligibility Determination</del>	<del>300.302</del>	<del>IDAPA 08.02.03.109.04a</del>
8E		<del>300.301</del>	<del>IDAPA 08.02.03.109.07</del>
		<del>300.300</del>	
8F	<del>IEP Development &amp; Implementation</del>	<del>300.503-300.504</del>	
		<del>300.622</del>	
8G		<del>300.301</del>	
	<del>Review &amp; Revision of IEP and Placement Decision</del>	<del>300.304-300.307</del>	
8H	<del>Reevaluation</del>	<del>300.309-300.311</del>	
		<del>300.112</del>	
		<del>300.320-300.324</del>	
	<del>Discontinuation of Services</del>	<del>300.112</del>	
		<del>300.324</del>	
		<del>300.116</del>	
		<del>300.303</del>	
		<del>300.305</del>	
		<del>300.102 (a)</del>	
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**CHAPTER 2 FREE APPROPRIATE PUBLIC EDUCATION (FAPE)  
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<b>Section</b>	<b>Topic</b>	<b>IDEA Regulations 34 CFR §</b>	<b>Idaho Code/IDAPA/<u>Legal Authority</u></b>
1.	Definition of <u>Free Appropriate Public Education</u> (FAPE)	300.17	
2. <del>2A</del> <del>2B</del> <del>2C</del> <del>2F</del> <del>2G</del> <del>2H</del>	<u>Provision of FAPE</u> <del>FAPE Considerations</del> <del>District Obligation</del>  <del>Limit to District Obligation When District Obligation to Provide FAPE ends</del> <del>Applicability to Charter &amp; Alternative Schools</del> <del>Applicability to Detained Youth</del>  <del>Using Public &amp; Private Insurance Funds to Provide FAPE</del>	<u>300.101-300.111</u> <del>300.101</del> <del>300.226 (e)</del> <del>300.132</del> <del>300.102</del>  <del>300.209</del>  <del>300.149 (e-d)</del> <del>300.102</del> <del>300.154</del>	Idaho Code 33-201 Idaho Code 33-2002 Idaho Code 33-2009 Idaho Code 33-2010 Idaho Code 20-504a IDAPA 08.02.03.109.02.c
<u>3.</u>	FAPE Considerations	<u>300.101-300.111</u>	<u>IDAPA 08.02.03.109.02 a</u> <u>IDAPA 08.02.03.109.02 c</u>

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**CHAPTER 3 CHILD FIND  
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<b>Section</b>	<b>Topic</b>	<b>IDEA Regulations 34 CFR §</b>	<b>Idaho Code/IDAPA/<u>Legal Authority</u></b>
1.	District Responsibility	300.111 300.131	IDAPA 08.02.03.109.02.a IDAPA 08.02.03.109.02.c IDAPA 08.02.03.109.02.d <u>IDAPA 08.02.03.109.02.h</u>
2. <del>2A</del>  <del>2B</del>	Locating Students <del>Coordination</del>  Public Awareness	<u>300.111</u> 300.124 300.154 <del>300.111</del>	<del>Idaho Code 16-103</del> <u>IDAPA 08.02.03.109.02.a</u> <u>IDAPA 08.02.03.109.02.c</u> <u>IDAPA 08.02.03.109.02.d</u> <u>IDAPA 08.02.03.109.02.h</u>
3. <del>3A</del> <del>3B</del>	Identification <del>Screening</del> <del>General Education Intervention</del>	300.302 300.226	<u>IDAPA 08.02.03.109.02.h</u> <del>IDAPA 08.02.03.109.02.i</del> <del>IDAPA 08.02.02.140</del>
4.  <del>4A</del>  <del>4B</del>	Referral to Consider a Special Education Evaluation <del>Evaluation Team</del>  Referral	<u>300.174</u> <u>300.301</u> <u>300.302</u> <u>300.305</u> <u>300.306</u> <u>300.308</u> <u>300.309</u> <u>300.504</u>  <del>300.306</del> <del>300.308</del> <del>300.301</del> <del>300.302</del> <del>300.309</del> <del>300.305</del> <del>300.504</del> <del>300.174</del>	<u>IDAPA 08.02.03.109.02.a</u> <u>IDAPA 08.02.03.109.02.h</u>

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**CHAPTER 4 ELIGIBILITY  
LEGAL CITATIONS**

<b>Section</b>	<b>Topic</b>	<b>IDEA Regulations 34 CFR §</b>	<b>Idaho Code/IDAPA/<u>Legal Authority</u></b>
1.	Evaluation Team	<del>300.301</del> <del>300.15</del> <del>300.8</del> <del>300.39</del> <del>300.304(b)</del> <u>300.306(a)(1)</u> <u>300.304(c)(1)(iv)</u>	<u>IDAPA 08.02.03.109.03</u>
2.	Purpose of an Evaluation	<del>300.116</del> <u>300.15</u>	<u>IDAPA 08.02.03.109.03</u>
3.	Written Notice and Consent for Assessment	<del>300.503</del> <del>300.9</del> <del>300.300</del> <u>300.503</u> <del>300.302</del>	<u>IDAPA 08.02.03.109.02.a</u>
4.	Information from Other Agencies or Districts	300.622 <del>99 FERPA</del>	<u>IDAPA 08.02.03.109.02.a</u>
5.	Evaluation and Eligibility Determination Procedures	300.8 300.39 <del>300.300-300.301</del> <del>300.304-300.311</del>	<del>IDAPA 08.02.03.109.04</del> <del>IDAPA 08.02.03.109.01.g</del> <u>IDAPA 08.02.03.109.02.a</u> <u>IDAPA 08.02.03.109.03</u>
6.	Reevaluation and Continuing Eligibility	300.300 300.303 <del>300.305-300.306</del> <u>300.308</u> <del>300.324</del>	<u>IDAPA 08.02.03.109.02.a</u>
7.	State Eligibility Criteria	300.8 <u>300.307</u>	IDAPA 08.02.03.109.03

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**CHAPTER 5 INDIVIDUALIZED EDUCATION PROGRAMS  
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<b>Section</b>	<b>Topic</b>	<b>IDEA Regulations 34 CFR §</b>	<b>Idaho Code/IDAPA/<u>Legal Authority</u></b>
1.	IEP Initiation <del>— IEP Definition</del> <del>— Special Education Definition</del> <del>— IEPs</del> <del>— Meeting Definition</del> <del>— When IEP must be in effect</del> <del>— Determination of Eligibility</del> <del>— Development, review, revision</del> <del>— IEP Team</del> <del>— IEP Team Attendance</del> <del>— Private School Representative</del> <del>— General Education Teacher</del> <del>— Consolidation of Meetings</del> <del>— Invitation to IEP Meeting</del> <del>— Invitation to Student</del> <del>— Invitation Requirements at 16</del> <del>— Alternative Participation</del> <del>— Language of Construction</del>	<del>300.320-300.328</del> 300.22 300.39 <del>300.320-300.324</del> 300.501 <del>300.323(c)(2)</del> <del>300.306(c)(2)</del> <del>300.324</del> <del>300.321</del> <del>300.321(e)</del> <del>300.325.(a)(2)</del> <del>300.324(a)(3)</del> <del>300.321(a)(5)</del> <del>300.322</del> <del>300.321(b)</del> <del>300.322(b)(2)</del> <del>300.328</del> <del>300.320(d)</del>	IDAPA 08.02.03.109.04  <del>IDAPA 08.02.03.111.04</del> <del>IDAPA 08.02.03.107.05</del>
2. 2A	IEP Development IEP Contents Progress toward Goals Related Services Medicaid or Insurance Supplementary Aids, Services Accommodations Assistive Technology  Assistive Technology in the Home Universal Design Hearing Aids and Devices Extended School Year Least Restrictive Environment Parents as part of Decision Disciplinary Placement Parent Objection to IEP Transition Services Consent for Services	300.320-300.325 <del>300.320</del> <del>300.320(a)(3)</del> 300.34 <del>300.154(d)(e)</del> 300.42 <del>300.320(a)(6)</del> 300.5-300.6  300.105(b) 300.44 300.113 300.106 300.114-300.116 300.327 300.536  300.43 300.300(b)	IDAPA 08.02.03.109.04 <del>IDAPA 08.02.03.102.01</del> <del>IDAPA 08.02.03.200</del> <del>IDAPA 08.02.03.210</del> <del>IDAPA 08.02.03.211</del> Idaho Code 33-1304 <del>IDAPA 08.02.03.112</del> IDAPA 08.02.03.109.05 <del>IDAPA 08.02.03.105.05</del> <del>IDAPA 08.02.03.104.02</del> Idaho Code 33-2002(4) <del>IDAPA 08.02.03.109.05(a)</del>

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	<u>Consent for Reevaluation Summary of Performance After the Meeting</u>	<u>300.300(e)(2)</u> <u>300.305(e)</u> <u>300.323(d)</u>	
3.	<u>IEP Reviews</u>	<u>300.324</u>	
4.	<u>IEPs for Transfer Students</u>	<u>300.323(e) – (g)</u>	<u>IDAPA 08.02.03.109.04 (e)</u> <u>IDAPA 08.02.03.109.04 (f)</u>
5.	<u>IEPs for Children from the Infant/Toddler Program</u>	<u>300.323(b)</u>	<u>IDAPA 08.02.03.109.04 (d)</u>
6.	<u>Students with Disabilities in Adult Prisons</u>	<u>300.102(a)(2)(i)(A)(B)</u> <u>300.324(d)</u>	<u>20 U.S. Code § 1412</u>

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**CHAPTER 6 LEAST RESTRICTIVE ENVIRONMENT  
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<b>Section</b>	<b>Topic</b>	<b>IDEA Regulations 34 CFR §</b>	<b>Idaho Code/IDAPA/<u>Legal Authority</u></b>
	<del>Overview</del>	<del>300.114</del>	<del>IDAPA 08.02.03 (04) (c)</del>
1. <del>1A</del> <del>1B</del> <del>1C</del>	Least Restrictive Environment Considerations <del>When to Make and Review Placement Decisions</del> <del>Considerations in Placement Decisions</del> <del>Documentation of Placement Decisions</del>	<u>300.114-300.120</u> <del>300.116 (b) (1) (2)</del> <del>300.116</del> <del>300.120</del>	<u>IDAPA 08.02.03.109.04.a</u> <u>IDAPA 08.02.03.109.04.c</u>
2.	District Responsibility for Continuum of <u>Settings and Services</u>	<u>300.115-300.116</u>	<u>IDAPA 08.02.03.109.04.a</u> <u>IDAPA 08.02.03.109.04.c</u>
<u>3.</u>	<u>Federal Reporting of LRE Out of State Students Residing in Residential Facilities</u>	<u>300.600-604</u>	<u>IDAPA 08.02.03.109.04.g</u> <del>Idaho Code 33-1002B</del>



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**CHAPTER 7 DISCONTINUATION OF SERVICES, GRADUATION, AND GRADING  
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<b>Section</b>	<b>Topic</b>	<b>IDEA Regulations 34 CFR §</b>	<b>Idaho Code/IDAPA/Legal Authority</b>
1. <del>1A</del>	Discontinuation of Services <del>Students Who Are No Longer Eligible for Services</del>	300.305 300.306 300.102 (a) (3) <del>(i-ii) (i-iii)</del> 300.503	Idaho Code 33-201 Idaho Code 33-209  <u>IDAPA08.02.03.109.07</u>
<del>1B</del>	<del>Change in District Obligation to Provide Services</del>		
<del>1C</del>	<del>Request for Withdrawal from Special Education</del>	300.305 300.306 300.503	
2. <del>2A</del>	Graduation <del>Individualized Education Program Team Requirements regarding Graduation</del>	<del>300.306</del>  300.102. (a) (3) (i-iii) 300.320 <del>(a) (7)</del> (b) (2)	IDAPA 08.02.03.109.07
<del>2B</del>	<del>Graduation Ceremonies</del>		
3.	Transcripts and Diplomas		<del>IDAPA 08.02.03.105.03</del> IDAPA 08.02.03.109.07 <del>IDAPA 08.02.03.107.e</del> <i>Letter to Runkel, 25 IDELR 387 (OCR 1996)</i> <u>20 U.S. Code § 1412</u>
4.	Grades, Class Ranking, and Honor Roll		<i>Letter to Runkel, 25 IDELR 387 (OCR 1996)</i>

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**CHAPTER 8 CHARTER SCHOOLS  
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<b>Section</b>	<b>Topic</b>	<b>IDEA Regulations 34 CFR §</b>	<b>Idaho Code/IDAPA/Legal Authority</b>
1. <del>1A</del> <del>1B</del>	Definition and Parent/Student Rights <del>Definition of Charter Schools</del> <del>The Rights of Charter School Students and Their Parents</del>	300.7 300.209(a)	Idaho Code 33-5205 Idaho Code 33-5206
2. <del>2A</del> <del>2B</del>	Responsibility for Services <del>Charter School Authorized by the District</del> <del>Charter School Operating as an LEA</del>	300.2 300.209(b-c) <del>300.209(e)</del>	Idaho Code 33-5205 <u>IDAPA 08.02.03.109.02.a</u> <u>IDAPA 08.02.03.109.02.c</u>
3.	Essential Components of a Special Education Program	300.209	Idaho Code 33-5205 IDAPA 08.02.03.109.02.c <del>IDAPA 08.02.04.201.01</del> <del>IDAPA 08.02.04.202</del> <del>IDAPA 08.02.04.203.02</del> <del>IDAPA 08.02.04.300.01</del> <del>IDAPA 08.02.04.301.01</del>
4.	Charter Schools and Dual Enrollment		Idaho Code 33-203 Idaho Code 33-2002
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**CHAPTER 9 PRIVATE SCHOOL STUDENTS  
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4.	<u>Dual Enrollment by Parents</u>	<u>300.137(a)</u>	<u>Idaho Code 33.203</u> <u>IDAPA 08.02.03.109.02.d</u>
5.	<u>Students Unilaterally Placed by their Parents when FAPE is Issued</u>	<u>300.148</u> <u>300.101</u>	<u>IDAPA 08.02.03.109.02.d</u>
6.	<u>Out of State Students Residing in Residential Facilities</u>	<u>300.131</u>	<u>IDAPA 08.02.03.109.02.d</u>

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**CHAPTER 10 IMPROVING RESULTS  
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**CHAPTER 11 PROCEDURAL SAFEGUARDS  
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**CHAPTER 12 DISCIPLINE  
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2.	Actions Involving a Change of Placement	<del>300.530-300.532</del> <del>300.530(d)</del> <del>300.530(e)</del> 300.536 <del>300.530(g)</del> 300.536 <del>300.534</del>	
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4.	Procedures for a Manifestation Determination	300.503(c-f)	Idaho Code 33-205
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**CHAPTER 13 DISPUTE RESOLUTION  
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Section	Topic	IDEA Regulations 34 CFR §	Idaho Code/IDAPA/ <u>Legal Authority</u>
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2. <del>2A</del> <del>2B</del> <del>2C</del> <del>2D</del> <del>2E</del>	<u>Informal Conflict Resolution</u> <del>Mediation</del> <del>Definition</del> <del>Mediation Policies</del> <del>Contracted Mediators</del> <del>Confidentiality</del> <del>Mediation Agreement</del>	300.506 <del>300.506</del> <del>300.506</del> <del>300.506</del> <del>300.506</del>	IDAPA 08.02.03.109.05.b
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4. <del>4A</del> <del>4B</del> <del>4C</del> <del>4D</del> <del>4E</del>	<u>State Administrative Complaints</u> <del>Due Process Hearings</del> <del>Definition</del> <del>Hearing Request by Parent</del> <del>Hearing Request by District</del> <del>Contents of Request</del> <del>Actions for Hearings</del>	<u>300.151-300.153</u> <del>300.507-300.508</del> <del>300.507</del> <del>300.507</del> <del>300.508(b)</del> <del>300.508</del> <del>300.510-515</del> <del>300.518</del>	<u>IDAPA 08.02.03.109.05</u>
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**OVERVIEW**

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## **Chapter 1 Overview**

The education of students with disabilities is firmly rooted in the constitutional guarantees involved in the “protection of vulnerable minorities.” This relationship means that the provision of services to students with disabilities is a basic civil right protected by the Constitution. Three (3) Federal laws have been passed to ensure educational opportunities ~~these constitutional guarantees~~ for individuals with disabilities:

- the Individuals with Disabilities Education ~~Improvement~~ Act of 2004 (IDEA 2004)
- Section 504 of the Rehabilitation Act of 1973 (Section 504)
- the Americans with Disabilities Act of 1990 (ADA)

The last reauthorization of the IDEA was in 2004 and aligned the law ~~was aligned~~ with the Elementary and Secondary Education Act of 2001—also known as the No Child Left Behind (NCLB) Act. The IDEA 2004 preserves the basic structure and civil rights of previous reauthorizations and emphasizes both *access* to education and *improved results* for students with disabilities based on data and public accountability.

This manual provides ~~detailed~~ information regarding district responsibilities under the IDEA 2004 ~~and the IDEA regulations of 2006, which took effect on October 13, 2006~~ and relevant Idaho legal requirements.

### **Section 1. Child Find**

The district is responsible for establishing and implementing an ongoing Child Find system. Child Find activities are conducted ~~(4)~~ to create public awareness of special education programs; ~~(2)~~ to advise the public of the rights of students, and; ~~(3)~~ to alert community residents of the need for identifying and serving students with disabilities from the age of three (3) through the semester in which they turn twenty-one (21).

The district is also responsible for coordinating with the Department of Health and Welfare regarding the Child Find system for children ages birth through two (2) years. The Child Find system includes children with disabilities who are homeless, as defined by the McKinney-Vento Homeless Act (see Glossary), wards of the state, or attending private schools, regardless of the severity of the disability.

See Chapter 3 for more information on Child Find.

## Section 2. Procedural Safeguards

~~A parent and/or adult student~~ parent/adult student has specific procedural safeguards assured by the IDEA 2004 and State law. The district provides a document titled *Procedural Safeguards Notice to ~~parents and/or adult students~~ parents/adult students* that contain a full explanation of special education rights.

See Chapter 11 for more information on procedural safeguards.

## Section 3. Student Eligibility under the IDEA 2004

~~The existence of a disability or medical diagnosis does not, by itself, mean that a student is eligible under the IDEA 2004.~~ To be eligible for services under the IDEA2004, a student must have a disability that:

1. meets the Idaho state disability criteria;
2. adversely affects educational performance; and
3. results in the need for ~~special education, that is,~~ specially designed instruction and related services.

The process used to make this determination is called “eligibility evaluation.” During an eligibility evaluation, an evaluation team (which includes educators and the ~~parent and/or adult student~~ parent/adult student) reviews information from the evaluation completed (multiple sources including, but not limited to, general education interventions, formal and informal assessments, and progress in the general curriculum) in making the eligibility determination.

See Chapter 4 for more information on eligibility and evaluation.

## Section 4. Free Appropriate Public Education (FAPE)

The ~~local education agency (district)~~ (LEA) is required to ensure that a free appropriate public education (FAPE) is available to students who reside in the district and are eligible for special education. FAPE is individually determined for each student that qualifies for special education. FAPE *must* include special education in the least restrictive environment (LRE) and *may* include related services, transition services, supplementary aids and services, and/or assistive technology devices and services. A definition of each of these terms can be found in the glossary.

See Chapter 2 for more information on FAPE.

## **Section 5. District Programs and Services**

The district shall ensure that the same array of academic, nonacademic, and extracurricular activities and services is available to students with disabilities as is available to students without disabilities.

### **A. Educational Programs and Services**

The district shall take steps to ensure that students with disabilities have the variety of educational programs and services that are available to all other students served by the district. These may include art, music, industrial arts, consumer and homemaking education, vocational education, and other programs in which students without disabilities participate.

### **B. Physical Education**

Physical education services, specially designed if necessary, shall be made available to every student with a disability receiving FAPE, unless the public agency enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.

### **C. Nonacademic and Extracurricular Services and Activities**

The district shall take steps, including the provision of supplementary aids and services determined appropriate and necessary by the student's Individualized Education Program (IEP) ~~Team~~ team, to provide nonacademic and extracurricular services and activities in a manner that affords students with disabilities an equal opportunity to participate in those services and activities. This includes counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the district, referrals to agencies that provide assistance to persons with disabilities, and employment of students, including both employment by the district and assistance in making outside employment available.

## **Section 6. Individualized Education Program (IEP)**

The IEP is a document that outlines how a particular student with a disability will receive a free appropriate public education (FAPE) in the least restrictive environment (LRE). It is a working document that can be amended as the student's needs change. The IEP is created collaboratively by IEP team members, including parents, the student, if appropriate, the student's teachers and other district personnel.

See Chapter 5 for more information on IEP development.



## Section 7. Least Restrictive Environment (LRE)

The IDEA 2004 states that, to the maximum extent appropriate, students with disabilities are to be educated with students who are not disabled. The IEP team determines ~~should consider~~ what constitutes LRE for the individual student. This includes considering that a continuum of alternative placements is available to meet the needs of children with disabilities and for special education and related services.

See Chapter 6 for more information on LRE.

## Section 8. Summary of Activities That May Lead to Special Education Services

This section describes the steps that may lead to special education services. The activities that are within each step are often sequential, but could occur simultaneously. The process might occur in a different sequence for emergency or interim placements. A flowchart of these steps is provided at the end of this chapter.

### A. General Education Interventions (carried out by the problem-solving team)

A general education problem-solving team addresses student learning needs and ensures that referrals to consider special education are appropriate. The general education problem-solving process may include comprehensive early intervening services based on whole-school approaches such as: a three-tiered model using scientifically based reading (and other content area) programs, positive behavior supports, and a response-to-intervention system.

Accommodations and instructional and/or behavioral interventions shall be attempted during the problem-solving process. These accommodations and interventions shall be of sufficient scope and duration to determine the effects on the student's educational performance and shall be clearly documented.

If the student shows adequate progress with general education interventions and accommodations, a referral to consider a special education evaluation may be unnecessary. However, if general education interventions and accommodations need to be provided on an ongoing basis or if the student shows limited or no progress *and* the student's performance is significantly discrepant from peers, a referral to consider a special education evaluation may be warranted. Also, a parent of a student may initiate a referral for special education at any time and a district may not deny that referral simply because the student had not gone through the general education intervention process.

See Chapter 4 and Appendixes 3 and 4 for more information on problem-solving activities and the three tiered model.

## **B. Referral to Consider a Special Education Evaluation**

Following the problem-solving team's review of the student's response to general education interventions, if the team suspects that the student has a disability and may be in need of special education that adversely impacts his or her education, the problem-solving team shall initiate a referral to consider a special education evaluation. The purpose of this referral is to bring a student to the attention of an evaluation team so that it can determine whether to conduct a special education evaluation.

A referral ~~to consider a~~ for a special education evaluation marks the point at which procedural safeguards are provided to the parent. ~~activated~~ The parent and/or adult student parent/adult student shall be involved in decisions once a written referral has been made to the evaluation team to consider a special education evaluation.

The evaluation team shall review existing data, ~~including which may include progress monitoring data from the student's IEP, assessments and information provided by parent and/or adult student~~ the parent/adult student, and document the review process, to determine the need for further assessment. The evaluation team will procure the necessary written consents for additional assessments.

See Chapter 3 for more information on the referral process to consider a special education evaluation and who can make a referral.

## **C. Written Notice and Written Consent** (completed by an evaluation team)

Before administering assessments as part of the special education evaluation, written notice shall be provided to the ~~parent and/or adult student~~ parent/adult student along with the procedural safeguards and written consent shall be ~~requested~~ obtained from the ~~parent and/or adult student~~ parent/adult student. The district may use a single form that meets the requirements of written notice and consent for assessment. In addition, if the evaluation team needs information for an evaluation from a non-educational agency or an individual, such as a doctor, written consent for the release of information shall be obtained from the ~~parent and/or adult student~~ parent/adult student.

See Chapter 4 and Chapter 11 for more information.

## **D. Evaluation and Eligibility Determination** (completed by evaluation team)

After receiving consent, the evaluation team shall schedule assessments and ensure they are conducted. The evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs. Next, the evaluation team reviews the assessment data, the response to general education targeted interventions, and ~~parent and/or adult student~~ parent/adult student input and recommendations to determine whether the student is eligible for

special education services. Then the evaluation team compiles an *Eligibility Report* using data collected from individual assessments and provides the ~~parent and/or adult student~~ parent/adult student with a copy of the report. The eligibility report shall address, to the extent required, the general education classroom, targeted interventions previously employed and the student's response to those interventions.

For children transferring from the Infant Toddler Program (ITP), eligibility shall be determined and an IEP developed or IFSP adopted by the child's third (3<sup>rd</sup>) birthday. See Chapter 5 for guidance on expectations. If a child turns three (3) during the summer, and the child does not require Extended School Year (ESY) services, special education and related services may begin in the new school year.

For children ages three (3) through twenty-one (21), the time between receiving consent for initial assessment and determining eligibility cannot exceed sixty (60) calendar days, excluding periods when regular school is not in session for five (5) or more consecutive school days (with the exception of ITP referrals which must be completed by the child's third (3<sup>rd</sup>) birthday). The parent and district may agree, in writing, to extend the sixty (60) day period. See Chapter 4 for guidance on timeline exceptions.

If the student is not eligible, the district shall provide written notice to the ~~parent and/or adult student~~ parent/adult student that the evaluation data does not indicate eligibility under the IDEA 2004 ~~even though the parent is a member of the team that determines eligibility.~~ The district shall maintain documentation in permanent records. ~~(A student ineligible under the IDEA 2004 may be considered to have a disability under Section 504.)~~

If the ~~parent and/or adult student~~ parent/adult student disagrees with the district's evaluation and/or the eligibility determination, he or she has the right to request SDE mediation, file a due process hearing challenging the decision, or seek an independent educational evaluation (IEE). See Chapter 11 for more information.

### **E. IEP Development and Implementation** (completed by IEP team)

~~The time between receiving consent for assessment 60 calendar days, excluding periods when regular school is not in session for five or more consecutive school days. The parent and district may agree in writing to extend the 60-day period for the purpose of initial assessment as long as Federal IDEA 2004 time requirements are met. See Chapter 4 for guidance on timeline exceptions.~~

The following activities are included in the development and implementation of the IEP:

1. Conduct an IEP team meeting to develop and implement an IEP within thirty (30) calendar days of a determination that the student is eligible for special education and related services. For eligible students, the IEP can be developed at the same meeting

at which eligibility is determined if all required IEP team members are present and agree to proceed.

2. After determining goals and services, determine the placement in the LRE in which the IEP can be implemented. For those goals that are aligned to the alternate achievement standards, benchmarks/objectives shall be written.
3. Obtain documentation indicating participation in the IEP team meeting.
4. Obtain consent from the ~~parent and/or adult student~~ parent/adult student for initial provision of special education services. ~~placement in special education~~
5. Provide copies of the IEP to the ~~parent and/or adult student~~ parent/adult student and other participants, as appropriate.
6. Provide written notice to the ~~parent and/or adult student~~ parent/adult student before implementing the IEP if the provision of FAPE or the educational placement is proposed to change or if the team refused to make a change based on the parent's request.
7. Make arrangements for IEP services by informing staff of their specific responsibilities under the IEP.
8. Implement the IEP as soon as possible, but no later than after it is developed within thirty (30) days of eligibility. (See Chapter 4 for guidance on timeline exceptions.)
9. Provide the ~~parent and/or adult student~~ parent/adult student with periodic reports of the student's progress towards IEP goals (such as quarterly or other periodic reports, concurrent with the issuance of report cards).

See Chapter 5 for more information on IEP development.

**F. Review and Revision of IEP and Placement Decision** (completed by IEP team)

1. Send the ~~parent and/or adult student~~ parent/adult student a *Procedural Safeguards Notice* with an invitation to attend an IEP meeting (required at least once annually).
2. Convene an IEP team meeting under these circumstances:
  - a. when changes in the IEP are requested or if the student is not making progress. In addition, the IDEA allows changes to the IEP without an IEP team meeting between the annual review dates if the district and parent agree; and

- b. at least annually to ~~review eligibility~~, develop a new IEP, and ~~determine placement~~.
3. Provide a copy of the revised IEP to the parent and the adult student when an IEP is amended or rewritten, ~~and when the student is no longer eligible for special education services~~. In addition, written notice is required if the district is proposing to change or refusing to change the educational placement ~~and/or~~ or the provision of FAPE.
4. Under Idaho regulations, the ~~parent and/or adult student~~ parent/adult student has the right to file a written objection ~~to changes proposed by the district to an IEP program change or placement change~~. If, within ten (10) calendar days of receiving written notice from the district, the ~~parent and/or adult student~~ parent/adult student files a written objection ~~to all or part of the proposed IEP or placement~~, the district shall not implement the change(s) to which the ~~parent and/or adult student~~ parent/adult student objects. See Chapter 11 for more information.

See Chapter 5 for more information on IEP reviews.

#### **G. Reevaluation** (completed by evaluation team)

Reevaluations are conducted by the evaluation team. A reevaluation ~~to determine whether a student continues to be eligible for special education services is~~ shall be completed as follows:

(a) at least every three years, (b) when requested by the student's teacher or the ~~parent and/or adult student~~ parent/adult student, and (c) whenever conditions warrant. Approximately one month before conducting the reevaluation, the district shall inform the ~~parent and/or adult student~~ parent/adult student that a reevaluation is due. The ~~parent and/or adult student~~ parent/adult student and district may agree in writing that a three-year reevaluation is not necessary. In addition, a reevaluation need not be conducted more than once per year unless the district and the parents agree.

The evaluation team shall include the following activities in the reevaluation process:

1. Invite the ~~parent and/or adult student~~ parent/adult student to participate in the review of existing data and to determine what additional data, if any, is needed as part of the reevaluation. Unless the ~~parent and/or adult student~~ parent/adult student requests that the evaluation team members meet as a group in a formal meeting, data can be gathered from individual team members at various times using a variety of methods.
2. Obtain written consent from the ~~parent and/or adult student~~ parent/adult student if additional assessments shall be conducted. After gaining consent, ensure the completion of assessments and eligibility reports. The IDEA does not require consent for a reevaluation if the district has made documented attempts to get consent and the parent has not responded.

3. If the evaluation team determines that additional assessments are not needed, provide written notice to the ~~parent and/or adult student~~ parent/adult student of this decision and of the ~~parent and/or adult student~~ parent's/adult student's right to request assessments.
4. Prepare an *Eligibility Report* that details the eligibility requirements for the student, even when no new assessments are conducted. The report shall address each required eligibility component.
5. Provide the ~~parent and/or adult student~~ parent/adult student with a copy of the *Eligibility Report*.
6. Determine whether revisions to the IEP are necessary ~~Develop~~ and implement an IEP, if the student continues to be eligible. If the student is not eligible, follow procedures to discontinue services.

See Chapter 4 for more information on reevaluation.

#### **H. Discontinuation of Services**

Provide prior written notice to the ~~parent and/or adult student~~ parent/adult student informing them of the discontinuation of services when:

1. The evaluation team determines the student no longer meets eligibility requirements for special education services; or
2. The student meets the district and State requirements that apply to all students for receipt of a regular high school diploma; or
3. The student completes the semester in which he or she reaches the age of twenty-one (21) years.
4. Parent/adult student revokes consent for special education services.

When a student exits from special education as a result of graduating or aging out, the district shall provide the student with a summary of his or her academic achievement and functional performance, along with recommendations on how to assist the student in meeting postsecondary goals.

See Chapter 7 for more information on the discontinuation of services.

Chart

**General Education Interventions** (completed by problem-solving team)

- Team considers components of the three tiered model of Response to Intervention.
- Problem solve, plan and implement interventions and accommodations; document results.

Special Education Activities

**A. Child Find Activities**

**B. Referral to Consider a Special Education Evaluation** (completed by problem-solving team and evaluation team) ~~or the parent/adult student~~

- Problem-solving team submits a formal referral to consider special education evaluation.
- Provide the ~~parent and/or adult student~~ parent/adult student with a *Procedural Safeguards Notice*. (required)
- Seek ~~parent and/or adult student~~ parent/adult student input and afford opportunity for a meeting.
- Evaluation team decides whether to conduct further assessments.

**C. Written Notice and Consent** (completed by the evaluation team)

- Provide written notice to the ~~parent and/or adult student~~ parent/adult student.
- Seek consent from the ~~parent and/or adult student~~ parent/adult student for assessments.
- Receive written consent for assessment from the ~~parent and/or adult student~~ parent/adult student.

**D. Evaluation and Eligibility Determination** (completed by evaluation team)

- Schedule and conduct assessments.
- Review assessment information with ~~parent and/or adult student~~ parent/adult student. Determine eligibility and complete the *Eligibility Report*. (Meeting with the entire team is a ~~parent and/or adult student~~ parent/adult student option.)
- Provide the ~~parent and/or adult student~~ parent/adult student with a copy of the *Eligibility Report*.

**E. IEP Development and Implementation** (completed by IEP team)

- Invite the ~~parent and/or adult student~~ parent/adult student to the IEP team meeting.
- Provide a *Procedural Safeguards Notice* to the ~~parent and/or adult student~~ parent/adult student. (at least once annually)
- Develop IEP and determine placement in LRE.
- Provide a copy of the IEP with written notice to the ~~parent and/or adult student~~ parent/adult student.
- Receive consent for initial provision of special education services ~~placement~~ from the ~~parent and/or adult student~~ parent/adult student.
- Implement IEP.

**F. Review/Revision of IEP and Placement Decision** (completed by IEP team)

- Provide a *Procedural Safeguards Notice* to the ~~parent and/or adult student~~ parent/adult student if applicable.
- Invite the ~~parent and/or adult student~~ parent/adult student to the IEP team meeting.

- Review ~~eligibility, develop an the~~ IEP, and determine placement annually.
- Provide a copy of IEP with written notice to the ~~parent and/or adult student~~ parent/adult student.

**G. Reevaluation** (completed by evaluation team)

- Inform the ~~parent and/or adult student~~ parent/adult student that reevaluation is due.
- Provide a *Procedural Safeguards Notice* to the ~~parent and/or adult student~~ parent/adult student if applicable.
- Seek ~~parent and/or adult student~~ parent/adult student input on reevaluation and afford opportunity to request a meeting.
- Receive consent from the ~~parent and/or adult student~~ parent/adult student for assessments if planning to assess **OR**  
Provide the ~~parent and/or adult student~~ parent/adult student with written notice that no further assessments shall be conducted if the evaluation team determines that existing information is adequate. Inform ~~parent and/or adult student~~ parent/adult student of his or her right to request additional assessments.
- Schedule and conduct assessments.
- Review assessment information with ~~parent and/or adult student~~ parent/adult student. Determine eligibility and complete the *Eligibility Report*. (Meeting with the entire team is a ~~parent and/or adult student~~ parent/adult student option.)
- Provide the ~~parent and/or adult student~~ parent/adult student with a copy of the *Eligibility Report*.

**Go to steps in Box F or Box H.**

**H. Discontinuation of Services**

- Provide written notice to the ~~parent and/or adult student~~ parent/adult student before discontinuing special education services.

**Upon graduation provide a summary of performance to the ~~parent and/or adult student~~ parent/adult student.**





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**Chapter 2**

**FREE APPROPRIATE PUBLIC EDUCATION**

**Chapter Contents**

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## **Chapter 2 Free Appropriate Public Education**

The district (local education agency) is required to ensure that a free appropriate public education (FAPE) is available to residents, homeless individuals and individuals from migrant families ages three (3) to twenty-one (21) students in the district and who are eligible for special education. FAPE is individually determined for each student with a disability. FAPE *must* include special education in the least restrictive environment (LRE) and *may* include related services, transition services, supplementary aids and services, and/or assistive technology devices and services. A definition of each of these terms can be found in the glossary.

### **Section 1. Definition of a Free Appropriate Public Education (FAPE)**

The definition of FAPE under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) means special education and related services that:

1. are provided at public expense (free);
2. are provided in conformity with an appropriately developed individualized education program, or IEP (appropriate);
3. are provided under public supervision and direction (public); and
4. include an appropriate preschool, elementary, and secondary education that meets the education standards, regulations, and administrative policies and procedures issued by the State Department of Education (education).

### **Section 2. Provision of FAPE**

#### **A. District Obligation**

The district is required to ensure that FAPE is available to students in the district who are eligible for special education. This includes students who reside in group, personal care, or foster homes, as well as institutions, if their legal guardian is a resident of Idaho, even though the guardian may reside in another Idaho school district. It also includes students who are migratory or homeless as defined by the McKinney-Vento Homeless Act (see Glossary). If a student from another state is placed in Idaho by an out-of-state agency, parent, or district, the placing district, parent, or agency is responsible for the educational costs. If a student is placed in a district by an Idaho agency, the student is entitled to FAPE and the responsible agency is determined upon Idaho Code regarding the specific situation.

The district is obligated to make FAPE available to each eligible student in the district as follows:

1. The district shall provide FAPE to an individual who is at least three (3) years old and who qualifies for special education services unless the ~~parent and/or adult student~~ parent/adult student has refused special education services. Students aged three (3) to five (5) must have their special education services identified on an IEP since Idaho does not have state-funded preschool programs.
2. The district shall offer FAPE to parentally placed private school students who are legal residents of the district in accordance to statutory and regulatory language, which states that parentally placed private school students with disabilities do not have an individual right to some or all of the special education and related services that the student would receive if enrolled in a public school.
3. A free appropriate public education shall be available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course, and is advancing from grade to grade.

Note: Participation in Comprehensive Early Intervening Services neither limits nor creates a right to FAPE.

#### **B. Limit to District Obligation**

1. ~~The district is not obligated to provide some or all special education and related services, if it has been offered, but a parent elected to place the student in a private school or facility.~~ A student with a disability who has been placed in a private school or facility by the parent does not have an individual right to receive all or part of the special education and related services that the child would receive if enrolled in a public school. However the district shall include that student in the population whose needs are addressed consistent with would have Child Find requirements responsibilities. See Chapter 9 for more information.
2. ~~Students who are home schooled and dually enrolled are considered private school students for the purposes of dual enrollment. The same procedures would be available to these students as parentally placed private school students who are dually enrolled~~ Students who are homeschooled are considered nonpublic students for the purpose of dual enrollment, however a student being homeschooled is not considered a private school student. Students who are dually enrolled in a school district's general education program may be considered for a Section 504 plan if needed to provide supports and/or accommodations for those general education courses for which they are enrolled. A student who is enrolled in a virtual public school is not considered a homeschooled student for the duration that they attend that virtual public school.

Homeschool students who are dually enrolled are considered to be nonpublic school students. The district shall allow homeschool students who are eligible for special education and who are otherwise qualified to participate in school programs under the dual enrollment law to:

1. enroll in general education courses under the same criteria and conditions as students without disabilities; and
2. receive accommodations in the general education courses for which they are enrolled on a Section 504 plan, if needed.

Homeschool students may not dually enroll solely for special education and/or related services. The dual enrollment statute does not establish an entitlement to FAPE for a student with a disability. This means that there is no individual right to receive some or all special education services that the student would receive if enrolled in public school.

### **C. When District Obligation to Provide FAPE Ends**

The District's obligation to provide FAPE to a student ends:

1. At the completion of the semester in which the student turns twenty-one (21) years old;
2. when the student meets the district requirements that apply to all students for receipt of a regular high school diploma; a regular high school diploma does not include an alternative degree that is not fully aligned with the Idaho Content Standards or Idaho Common Core Standards, such as a certificate or a general educational development credential (GED); or
3. when the student no longer meets the eligibility criteria for special education services, as determined by the team after a reevaluation; or
4. when a parent/adult student has revoked consent for the continued provision of special education services.

### **D. Temporary Suspension of FAPE**

The district is not required to provide FAPE to an eligible student during the suspension of ten (10) cumulative school days or less during a school year (unless the district provides services to students who are not disabled who are so suspended); however, FAPE must be provided following this ten (10) day exception.

## **Section 3. FAPE Considerations**

### **A. Case Law Interpretations of FAPE**

The courts have further defined the term FAPE as a result of lawsuits between parents and districts. In 1982, the United States Supreme Court ruled in the case of Hendrix Board of

Education of the Hendrick Hudson Central School District, et al. v. Rowley, et al. Hudson Central School District Board of Education v. Rowley. This landmark case set a standard for FAPE that is commonly referred to as the *Rowley Standard*. The *Rowley* decision defines FAPE as including these two components:

1. an IEP developed in adequate compliance with the IDEA 2004 procedures; and
2. an IEP reasonably calculated to enable the student to receive educational benefit.

The *Rowley* decision also states that, if a student is being educated in the general education classroom, the IEP should be reasonably calculated to enable the student to achieve passing marks and advance from grade to grade, although passing grades are not determinative that FAPE has been provided.

## **B. Applicability to Charter and Alternative Schools**

Federal law requires the district to provide students with disabilities educational choices comparable to those choices offered to students without disabilities. These choices include the opportunity to attend a public charter school or alternative public school. Students enrolled in public charter and alternative schools are entitled to FAPE and retain all the rights and protections that are available under the IDEA 2004.

## **C. Applicability to Detained Youth**

Students with disabilities or suspected disabilities who are detained in city or county jails, juvenile detention centers, juvenile correctional facilities, or in Idaho prisons are entitled to FAPE.

1. Services to Youth Detained in City or County Jails

The district in which the facility is located has the responsibility for Child Find and the provision of FAPE to eligible youth.

2. Services to Youth Detained in Juvenile Detention Centers (JDC)

The district in which the facility is located has the responsibility for the provision of FAPE to eligible youth. Typically, detention in a JDC is short term, and the student most likely returns to his or her home district. If a district has a student who is detained in a JDC not located within the district boundaries, the district may find it beneficial to coordinate school assignments through the JDC's education staff while the student is in the facility.

3. Services to Youth Placed in the Custody of the Department of Juvenile Corrections (DJC)

When a student is placed in the custody of the Department of Juvenile Corrections, the responsibility for the provision of FAPE resides with the Department of Juvenile Corrections.

4. Services to Youth in the Custody of the Department of Correction (DOC)

When a student is placed in the custody of the Department of Correction, the responsibility for the provision of FAPE resides with the Department of Correction through an agreement between the SDE and the Department of Correction.

**D. Using Public and Private Insurance Funds to Provide FAPE**

If a student is covered by a parent's private or public insurance or benefits, the district may access this insurance only if the parent provides informed consent. The consent requirements are different for accessing a parent's private insurance as opposed to public insurance (such as Medicaid). ~~Each time the district proposes to access the private insurance, the district shall obtain written parental consent and inform the parent that his or her refusal to permit the district to access the private insurance does not relieve the district of its responsibility to ensure that all required services are provided at no cost to the parent.~~

If a district proposing to access a parent's public insurance to cover any of the costs associated with the provision of special education and/or related services, the district must do the following:

1. Provide written notification to the child's parents before accessing the child's or the parent's public benefits or insurance for the first time and prior to obtaining the one-time parental consent and annually thereafter. The written notification must explain all of the protections available to parents to ensure that parents are fully informed of their rights before a public agency can access their or their child's public benefits or insurance to pay for services under the IDEA. The notice must include a statement that the refusal to provide consent or the withdrawal of consent will not relieve the district's responsibility to ensure that all the required IEP services are provided at no cost to the parent. The notice must be written in language understandable to the general public and in the native language of the parent or other mode of communication used by the parent unless it is clearly not feasible to do so.
2. Obtain a one-time written consent from the parent after providing the written notification before accessing the child's or the parent's public benefits or insurance for the first time. This consent must specify (a) the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child); (b) the purpose of the disclosure (e.g., billing for services); and (c) the agency to which the disclosure may be made (e.g., Medicaid). The consent also must specify that the parent understands and agrees that the public agency may access the child's or parent's public benefits or insurance to pay for services. Such consent may be withdrawn at any time by the parent.



3. If the child on an IEP moves into a new district, the new district responsible for providing a FAPE must provide the parents with written notice and must obtain consent before accessing the parent's public insurance.

If a district is proposing to access a parent's private insurance to cover any of the costs associated with the provision of special education and/or related services, the district must get parental consent each time the district proposes to access private insurance.

**Chapter 3**

**CHILD FIND**

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### Chapter 3 Child Find

The Child Find system involves three basic steps leading to the determination of whether or not a student has a disability and requires special education. The steps are location, identification, and evaluation. This chapter describes location and identification activities. The evaluation process is covered in Chapter 4.

#### Section 1. District Responsibility

The district is responsible for establishing and implementing an ongoing Child Find system to locate, identify, and evaluate students suspected of having a disability, ages three (3) through the semester they turn twenty-one (21), who may need special education, regardless of the severity of the disability. The district is also responsible for coordinating with the Department of Health and Welfare (DHW) regarding the Child Find system for children ages birth through two (2) years. The district may appoint an individual to coordinate the development, revision, implementation, and documentation of the Child Find system.

The Child Find system shall include all students within the district's geographic boundaries including students who are:

1. enrolled in the district public school, however this would not include a student who is placed in that public school by another district;
2. enrolled in charter and alternative schools;
3. enrolled in homeschool; ~~Note~~
4. enrolled in parentally placed private elementary and secondary schools (including religious schools) located in the district; including out-of-state parentally-placed private school children with disabilities;
5. not enrolled in elementary or secondary school, including resident children ages three (3) through five (5);
6. advancing from grade to grade;
7. highly mobile students (such as migrant and homeless as defined by the McKinney Vento Homeless Act [see Glossary]); and
8. wards of the state.

## **Section 2. Locating Students**

Locating students who may have disabilities involves coordinating with other agencies and promoting public awareness.

### **A. Coordination**

For infants and toddlers, birth through two (2) years of age, Child Find is provided by the Idaho Infant/ Toddler Program (ITP). Although lead responsibility for the ITP has been designated to the DHW, interagency agreements provide for collaboration and coordination. The district shall use local interagency agreements for efficient use of resources and ease of service accessibility for students and families.

### **B. Public Awareness**

The district shall take and document the necessary steps to ensure that district staff and the general public are informed of the following:

1. the availability of special education services;
2. a student's right to a free appropriate public education (FAPE);
3. confidentiality protections; and
4. the referral process.

This information may be provided through a variety of methods such as distributing brochures or flyers, including information in school or district publications, disseminating articles and announcements to newspapers, arranging for radio and television messages and appearances, speaking at faculty meetings or district in-services, and making presentations.

## **Section 3. Identification**

The identification component of Child Find includes screening, early intervening through a problem-solving process, and referral to consider a special education evaluation. The procedural rights under the Individuals with Disabilities Education ~~Improvement~~ Act of 2004 (IDEA 2004) are afforded when the student is referred for a special education evaluation by the ~~parent and/or adult student~~ parent/adult student or the district.

### **A. Screening**

Screening is an informal, although organized process, of identifying students who are not meeting or who may not be meeting Idaho Content Standards, Idaho Common Core Standards, or Idaho Early Learning ~~Standards~~ Guidelines (eGuidelines). A variety of methods may be used to screen students, including performance on statewide assessments, curriculum-based measures,

daily work in the classroom, teacher observations, hearing and vision screeners, developmental milestones, and/or kindergarten readiness measures.

Screening for instructional purposes is not an evaluation. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

Although screening is an important part of the Child Find system, screening cannot be used to delay processing a referral to consider a special education evaluation where immediate action is warranted.

### **B. General Education Intervention (Comprehensive Early Intervening Services)**

Under the Local Education Agency (LEA) funding option, early intervening services are services for K-12 students who need additional academic and behavioral support to succeed in the *general education environment*. When a school's screening process reveals that a student or groups of students are at risk of not meeting the Idaho Content Standards or Idaho Common Core Standards, the general education problem-solving team shall consider the students' need for "supported" instructional and/or behavioral interventions in order to help the students succeed. These interventions are referred to as early intervening services or general education interventions, accommodations, and strategies. It is important to remember that students who receive early intervening services are not currently identified as needing special education or related services and do not have a right to FAPE. Therefore, the IDEA 2004-procedural safeguards are not applicable at this time.

Districts shall implement comprehensive coordinated services and activities that involve providing educational and behavioral evaluations, services, and supports. These services may also include professional development for teachers and other staff to enable them to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and where appropriate, instruction on the use of adaptive and instructional software. Comprehensive Early Intervening Services (CEIS) should be based on whole-school approaches such as; the three-tiered model, scientifically based curriculum and instruction, positive behavior supports, and a response to intervention system.

If a district chooses to use up to 15% of IDEA Part B ~~Federal~~ funds for CEIS for students in K-12 who are not currently identified as needing special education, but who need additional support in the general education environment, additional requirements may apply that will affect maintenance of effort . In addition, if IDEA Part B funds are used, the district must annually report to the SDE:

1. The number of children receiving CEIS; and
2. The number of children who received CEIS and subsequently received special education services during the preceding two year period.

If a district is found to have a significant disproportionate representation in special education, there are additional requirements for use of funds in CEIS. Please see Chapter 10 for more information on CEIS.

### **C. General Education Problem Solving**

#### **1. Establishing a Problem-Solving Team**

The district shall establish a problem-solving team and a process to plan accommodations and interventions in general education and to ensure that referrals to consider a special education evaluation are appropriate. Team membership is established by the school or the district and would likely involve general educators and administrators, and could include counselors, specialists, and special education personnel. While ~~parent and/or adult student~~ parent/adult student involvement is valuable and encouraged, the district is not required to include the ~~parent and/or adult student~~ parent/adult student on the team.

When problem solving involves a child ~~3-5~~ three to five (3-5) years of age, the team should seek input from family members, child care programs, private preschools, or Head Start Programs, as appropriate. An early childhood problem-solving process needs to consider early childhood environments and the preschool student's need for supported instructional interventions in order for the student to participate in appropriate activities. IDEA Part B funds cannot be used to provide CEIS to preschoolers.

#### **2. Referrals to the Problem-Solving Team**

Referrals to the problem-solving team may come from a variety of sources including parents, students, other family members, public or private school personnel, agencies, screening programs, or as a result of annual public notice.

Referrals may be made for a variety of reasons dealing with academic and behavioral concerns and may involve, but are not limited to, teaching strategies, material accommodations, social skills training, cooperative learning concepts, classroom organization, and scheduling.

#### **3. Interventions**

- a. Interventions in general education or an early childhood environment shall be attempted before a student is referred to an evaluation team, ~~unless an~~ the student's performance indicates an evaluation is warranted ~~evaluation is needed immediately or a parent makes a referral for a special education evaluation.~~

- b. Interventions shall be of sufficient scope and duration to determine the effects on the student's educational performance and should be clearly documented.
- c. Documentation of the success or failure of accommodations and interventions shall be reviewed and discussed by the problem-solving team.

**4. Problem-Solving Team Decisions Following General Education Intervention**

Based on a review of data and information presented by the referring party and others, the team has several decision options. In the case of a preschool student, data and information shall be gathered and reviewed from such settings as child care programs, private preschools, Head Start Programs, or the home. Following an intervention, the problem-solving team shall review progress monitoring data from the intervention and other relevant information to determine what action is warranted. The team considers a variety of options, including whether to:

- a. continue the general education intervention because the student is making adequate progress but needs more time to reach goals;
- b. continue the intervention in a modified form;
- c. explore services or programs outside of special education (such as Title I of the Elementary and Secondary Education Act, including English language programs; Section 504 accommodations; counseling); or
- d. make a referral to consider a special education evaluation.

Although problem-solving activities are an important part of the system, they cannot be used to delay processing a referral for consideration of a special education evaluation where immediate action is warranted. Either a parent or a public agency may initiate a request for an initial evaluation. If a parent initiates a referral for a special education evaluation, the evaluation cannot be delayed or denied due to the child not completing the general education intervention process.

**Section 4. Referral to Consider a Special Education Evaluation**

**A. Evaluation Team**

The evaluation team is the group of people established by the IDEA 2004 that has the responsibility for making decisions regarding evaluation, assessments, and eligibility. The composition of the evaluation team will vary depending on the nature of the student's suspected disability and other relevant factors. The evaluation team shall include the same membership (although not necessarily the same individuals) as the IEP team and other professionals as needed to ensure that appropriate, informed decisions are made.



Unlike an IEP team, an evaluation team has the flexibility of conducting business with or without a meeting. The case manager can gather input from evaluation team members in a variety of ways. The ~~parent and/or adult student~~ parent/adult student shall be included in the evaluation team and shall be given the opportunity to indicate whether he or she wishes the team to hold a meeting with all members attending.

## **B. Referrals to Consider Special Education**

The procedure for handling referrals to consider a special education evaluation for students suspected of having a disability includes the following:

1. Unless immediate action is warranted and documented, a referral to consider a special education evaluation is sent to the evaluation team *after* the problem-solving team has determined:
  - a. the student's response to research-based interventions in general education (or age-appropriate activities for preschool) has not resulted in adequate progress; and
  - b. language and cultural issues are not the main source of the student's academic or behavioral discrepancy from peers.
2. *A Referral to Consider a Special Education Evaluation/Reevaluation* form shall be completed.
3. Procedural safeguards are activated when a referral is made to consider a special education evaluation. If the referral came from someone other than the ~~parent and/or adult student~~ parent/adult student (see Glossary) the ~~parent and/or adult student~~ parent/adult student shall be notified. In either case, the ~~parent and/or adult student~~ parent/adult student shall be provided with a copy of the *Procedural Safeguards Notice*. At the same time, the ~~parent and/or adult student~~ parent/adult student shall be afforded an opportunity to provide input regarding the need for and scope of the initial evaluation, including the opportunity to hold a meeting if desired.
4. The evaluation team (including the ~~parent and/or adult student~~ parent/adult student) reviews all available records, including family and health history, past school experiences, the results of general education interventions, and previous assessments and evaluations. The evaluation team shall decide what additional assessments, if any, are needed. This review and determination process can take place at a face-to-face meeting of the evaluation team or through an alternate format, unless the ~~parent and/or adult student~~ parent/adult student desires that a meeting be held.
  - a. If the evaluation team determines that an evaluation is warranted, written notice shall be provided to the ~~parent and/or adult student~~ parent/adult student

describing the proposed evaluation and written consent shall be obtained from the ~~parent and/or adult student~~ parent/adult student.

- b. If the evaluation team determines that an evaluation is not warranted at this time, the team should seek other avenues for services to meet the student's needs. The person initiating the referral, if other than the ~~parent and/or adult student~~ parent/adult student, may be informed as to why the evaluation is not being conducted. Written notice of the district's refusal to evaluate a student for special education services shall be provided to the ~~parent and/or adult student~~ parent/adult student when he or she makes a referral for a special education evaluation and the district determines that the evaluation is not warranted.

Note: Districts are prohibited from requiring that a student obtain a prescription for a substance covered by the Controlled Substances Act as a condition of attending school, receiving an evaluation, or receiving services under the IDEA 2004.

See Chapter 4 for more information on evaluation and eligibility.



**Chapter 4**

**EVALUATION AND ELIGIBILITY**

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## Chapter 4 Evaluation and Eligibility

Chapter 3 discusses Child Find procedures used to locate and identify students with suspected disabilities. This chapter contains the requirements for the special education evaluation and eligibility process, from referral to consider special education through to the determination of eligibility. The Idaho State Department of Education has provided State Eligibility Criteria for special education services for eligibility consistent with the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) for districts to use while determining eligibility.

### Section 1. Evaluation Team

The evaluation team is a group of people outlined by IDEA 2004 with the responsibility to make decisions regarding evaluation, assessments, and eligibility. This team includes the same membership as the individualized education program (IEP) team (although not necessarily the same individuals) and other qualified professionals as needed to ensure that appropriate and informed decisions are made. The specific composition of the evaluation team reviewing existing data will vary depending upon the nature of the student's suspected disability and other relevant factors. The ~~parent and/or adult student~~ parent/adult student is a member of the evaluation team and shall be provided an opportunity to provide input and participate in making team decisions. The evaluation team may conduct its review without a meeting unless the ~~parent and/or adult student~~ parent/adult student requests that a meeting be held.

#### Additional Membership Requirements:

The determination of whether a student suspected of having a *specific learning disability* shall be made by the student's parents and a team of qualified professionals, which shall include:

1. The student's regular teacher; or if the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; and
2. ~~At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, or speech language pathologist, or remedial reading teacher.~~ A school psychologist is a required member of the team. When considering oral expression and listening comprehension, a speech language pathologist is a required member who may collaborate with or replace the school psychologist as the professional required to conduct and interpret evaluative examinations

## Section 2. Purpose of an Evaluation

The purpose of the evaluation process is to determine the eligibility of a student for special education services. This pertains to both initial determination and three year review of eligibility, or re-evaluation. It is also a process for gathering important information about a student's strengths and service needs. An evaluation process shall ~~should~~ include a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent.

### A. Definitions

Although the terms “evaluation” and “assessment” are often interchanged, there are significant differences between the meaning of the two terms. In an effort to clarify, the terms are defined as follows:

1. Evaluation refers to procedures used to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. The screening of a student by a teacher or specialist to determine appropriate *instructional* strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.
2. Assessment is integral to the evaluation process and includes the formal and ~~or~~ informal processes of systematically observing, gathering, and recording credible information to help answer evaluation questions and make decisions. A test is one method of obtaining credible information within the assessment process. Tests may be standardized or non-standardized, criterion-referenced (e.g. curriculum-based measures) or norm-referenced, and usually elicit responses from students to situations, questions, or problems to be solved. Assessment data may also include observations, interviews, medical reports, data regarding the effects of general education accommodations and interventions, and other formal or informal data.

### B. Evaluation Components

The district shall conduct a full and individual initial evaluation before the provision of special education and related services are provided to a student suspected of having a disability. A parent or a public agency may initiate a request for an initial evaluation to determine eligibility.

To be eligible for services under the IDEA~~2004~~, a student must have a disability that:

1. meets the Idaho state disability criteria;
2. adversely affects educational performance; and

3. results in the need for ~~special education, that is,~~ specially designed instruction and related services.

~~This initial evaluation will consist of procedures to collect assessment information to determine whether:~~

- ~~1. the student has a disability according to the established Idaho criteria;~~
- ~~2. the student's condition adversely affects academic performance; and~~
- ~~3. the student needs special education, that is specially designed instruction and related services;~~

In addition, the information from the evaluation can be used to consider the following:

1. the nature and extent of special education and related services needed by the student in order to participate and progress in the general education curriculum or curriculum aligned to the Idaho Content Standards, Idaho Core Standards, or the ~~Idaho Early Learning Standards~~ Idaho Early Learning Guidelines (eGuidelines); and
2. the least restrictive environment (LRE) for the student.

The above information also pertains to evaluations for determining Part B eligibility for children transitioning from the Infant/Toddler Program (ITP).

### **Section 3. Written Notice and Consent for Assessment**

Written notice shall be provided and informed consent shall be obtained before assessments are administered to a student as part of an evaluation.

#### **A. Written Notice Requirements**

Written notice shall be provided to the ~~parent and/or adult student~~ parent/adult student within a reasonable time before the district proposes to initiate the evaluation or re-evaluation of a student. Written notice shall be in words understandable to the general public. It shall be provided in the native language or other mode of communication normally used by a ~~parent and/or adult student~~ parent/adult student unless it is clearly not feasible to do so.

If the native language or other mode of communication is not a written language, the district shall take steps to ensure the following:



1. The notice is translated orally or by other means in the native language or other mode of communication;
2. The ~~parent and/or adult student~~ parent/adult student understands the content of the notice; and
3. There is written evidence that the above two requirements have been met.

The written notice shall include the following:

1. a description of the evaluation or reevaluation proposed or refused by the district;
2. an explanation of why the district proposes to evaluate or reevaluate the student;
3. a description of any other options the district considered and the reasons why those options were rejected;
4. a description of each assessment procedure, test, record, or report that the district used as a basis for the proposed or refused evaluation or reevaluation;
5. a description of any other factors relevant to the evaluation or reevaluation;
6. a statement that the ~~parent and/or adult student~~ parent/adult student has special education rights and how to obtain a copy of the *Procedural Safeguards Notice* (Note: If this is the initial evaluation, the parents should get a copy of the procedural safeguards with the initial notice of the special education evaluation; and
7. sources for parents to contact in obtaining assistance in understanding the *Procedural Safeguards Notice*.

Written notice shall be provided to the ~~parent and/or adult student~~ parent/adult student within a reasonable time in the following instances:

1. to conduct any additional assessments and review initial information ~~for~~ as part of the initial evaluation or reevaluation;
2. to explain refusal to initiate assessment; and
3. when the evaluation team determines that additional assessments are not required

See Chapter 11 for more information on written notice.

## B. Consent Requirements

1. Definition of Consent: Consent means that the ~~parent and/or adult student~~  
parent/adult student:

- a. has been fully informed in his or her native language or other mode of communication of all information relevant to the assessment for which consent is sought;
- b. understands and agrees in writing (as indicated by signature) to the activities described; and
- c. understands that granting of consent is voluntary on the part of the parent. A ~~parent and/or adult student~~ parent/adult student has provided consent shall understand that granting consent is voluntary and may be revoked in writing at any time *before* the assessment is completed. However, once the assessment has been completed, revocation of consent cannot be used to have the assessment disregarded.

2. Consent for initial evaluation

1.

- a. Informed written consent shall be obtained from the ~~parent and/or adult student~~ parent/adult student before the district conducts assessments as a part of an initial evaluation of the student to determine if he or she qualifies as a child with a disability;

2.

- b. Parental consent for initial evaluation should not be construed as consent for initial provision of special education and related services;

3.

- c. The school district shall make reasonable documented efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child has a disability and to identify the educational needs of the child. If a parent refuses consent, the district does not violate its obligation to provide FAPE if it declines to pursue the evaluation. If the parent does not provide consent, the district may offer an SDE facilitated meeting, mediation, or request a due process hearing to challenge the decision.

4.

- d. If the child is a ward of the State and is not residing with the child's parent, the district is not required to obtain informed consent from the parent for an initial evaluation to determine eligibility if:

a.

- b. 1) despite reasonable efforts to do so, the district cannot locate the parent;
- e. 2) the rights of the parents of the child have been terminated in accordance with Idaho law; or
- 3) the rights of the parent to make educational decisions have been subrogated by a judge in accordance with Idaho law and consent for initial evaluation has been given by an individual appointed by the judge to represent the child.

~~*This space intentionally left blank.*~~

- e. If a district is using any data gathered during general education interventions for a student suspected of being a student with a disability, and that data may be used for a later eligibility determination, the district shall promptly request consent to evaluate the student.

### **C. Consent ~~and/or Written Notice~~ for Reevaluation**

1. Written consent shall be sought for reevaluation that requires new assessments. Reevaluation consisting solely of review of existing data does not requires written notice.
2. Informed parental consent for a reevaluation need not be obtained if the public agency can demonstrate through documentation that it made reasonable efforts to obtain consent and the child's parent has failed to respond.

€

### **D. When Consent Is Not Required**

Parental consent is *not* required for:

1. the review of existing data as part of an evaluation or reevaluation;
2. the administration of a test or other assessment that is administered to all students, unless consent is required of parents of all students;
3. teacher or related service provider observations, ongoing classroom evaluations, or criterion-referenced tests that are used to determine the student's progress toward achieving goals on the IEP; and

4. screening by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation, which may include group or individual curriculum-based or norm-referenced measures.

**D**

**E. Refusing Consent or Failure to Respond to a Request for Consent**

1. The ~~parent and/or adult student~~ parent/adult student can refuse consent for ~~general areas of assessment(s), for specific procedures, or for assessment altogether.~~
2. For an initial evaluation, if consent is refused or the ~~parent and/or adult student~~ parent/adult student fails to respond, the student cannot be assessed. However, the district may request SDE facilitation, mediation, or a due process hearing. If the mediation results in consent to assess, or if a hearing officer's decision indicates that assessment is appropriate and there is no appeal, then the student may be assessed. However, the district does not violate its obligations to provide FAPE if it declines to pursue the evaluation. ~~In such case, the district shall maintain documentation of its attempts to get consent from the parent. The district shall not initiate initial provision of services without written consent from the parent and shall not pursue due process for initial provision of services.~~ Consent for the initial evaluation shall not be construed as consent for the initial provision of special education services should the student be deemed eligible.
3. If a parent of a child who is homeschooled or placed in a private school by the parents at their own expense does not provide consent for initial evaluation or reevaluation, or the parent fails to respond to a request to provide consent, the district may not use SDE mediation or due process procedures in order to gain consent and the district is not required to consider the child eligible for services.

Note: A district shall not use a parent's refusal for consent to one service or activity to deny the parent or student any other service, benefit, or activity.

See Chapter 11 for more information on consent and reasonable efforts.

**E**

**F. Timeline**

The time between receiving written consent for initial assessment and ~~implementing the IEP~~ eligibility determination cannot exceed sixty (60) calendar days, excluding periods when regular school is not in session for five (5) or more consecutive school days. The time between eligibility determination and ~~the development and implementation~~ of the IEP cannot exceed thirty (30) calendar days. The implementation of the IEP shall not exceed thirty (30) calendar days from the eligibility determination, unless all parties agree to an extension. For

children transferring from ITP, eligibility shall be determined and an IEP developed by the child's third birthday. If a child turns three during the summer, and the child does not require Extended School Year (ESY) services, special education and related services may begin in the new school year.

In unusual circumstances, all parties may agree in writing to an extension of the sixty (60) day period for the purpose of initial assessment. These circumstances may include the following:

1. The child enrolls in a school in another school district after the sixty (60) day timeline began and prior to the determination by the child's eligibility in the previous school district. If the new school district is making sufficient progress in determining eligibility, the parent and district shall ~~may~~ agree to a different timeline.
2. The parent repeatedly fails or refuses to produce the student for an evaluation after the district has made reasonable efforts to schedule an evaluation.

#### **Section 4. Information from Other Agencies or Districts**

Consent for release of information shall be received before the district seeks to obtain information about the student from other agencies, unless otherwise authorized by law. Upon receipt of consent, the case manager will send letters requesting information to individuals or agencies that have relevant information about the student. A copy of the signed consent form for release of information shall be included with the letters and a copy shall be retained in the student's confidential file. Sources of this additional information may include records from health and social service agencies, private preschool programs, legal service agencies, and non-school professionals such as physicians, social workers, and psychologists.

Federal laws and regulations do not require consent for the district to:

1. request information from other districts that the student has attended; or
2. send information to other districts in which the student intends to enroll.

For children transferring from the ITP, eligibility shall be determined and the IEP developed by the date that the child turns three (3) years of age. See Chapter 5 and Appendix 5B for additional information on collaboration with the ITP throughout the transition process.

#### **Section 5. Evaluation and Eligibility Determination Procedures**

### A. Areas to Assess

The student shall be assessed in all areas related to the suspected disability, which includes areas such as functional, developmental, and academic skills needed to participate and progress in the general education curriculum. If needed, qualified personnel shall conduct an individual assessment of assistive technology needs, including a functional evaluation in the individual's customary environment. The evaluation of each student with a disability shall be full and individualized and sufficiently comprehensive to identify all of the student's suspected special education and related service needs whether or not commonly linked to the disability category in which the student may be classified. For youth with IEPs, no later than age sixteen (16), above, If secondary transition services are needed, appropriate transition assessments shall be conducted. Beginning with the IEP to be in effect when a student is sixteen (16) years old (or younger if determined appropriate by the IEP team), appropriate transition assessments shall be conducted.

Evaluation teams shall be especially mindful of cultural and linguistic differences during the evaluation and eligibility process. Caution is advised in the selection of informal or formal assessments that are nonbiased, administration of assessments, interpretation, and application of outcomes in order to appropriately identify culturally or linguistically diverse students for special education services.

See Appendix 4 for more guidance on determining eligibility for culturally and linguistically diverse students.

### B. Determination of Needed Initial or Reevaluation Data

As part of an initial evaluation or reevaluation, the evaluation team shall ~~will~~ review existing evaluation data regarding the student including: depending on the student's suspected disability and other relevant factors including:

1. assessments and information provided by the ~~parent and/or adult student~~ parent/adult student concerning the student;
2. current classroom-based assessments and observations, and/or data regarding the student's response to scientific research-based interventions;
3. observations by teachers and related service providers; and
4. results from statewide and district wide testing.

Based on that review, and input from the ~~parent and/or adult student~~ parent/adult student, the evaluation team will decide on a case-by-case basis what additional data, if any, are needed to determine:

1. whether the student meets eligibility criteria for special education;
2. the student's present levels of academic and functional performance, including academic achievement and related developmental needs of the student;
3. whether the student needs specially designed instruction ~~education and related services~~; or
4. whether any additions to the special education and related services are needed to enable the student to:
  - a. meet the measurable annual goals set out in the student's IEP; and
  - b. be involved in and progress in the general education curriculum (or participate, as appropriate, in the general education curriculum ~~(for-preschool students, to participate in appropriate activities).~~

If the evaluation team determines additional assessments are not required for the purpose of determining whether the student meets eligibility criteria during an initial evaluation or a reevaluation, the district shall provide written notice to the ~~parent and/or adult student~~ parent/adult student of the decision and the reasons for that decision. The ~~parent and/or adult student~~ parent/adult student shall also be informed of his or her right to request assessments to determine eligibility and to determine the child's educational needs. The district is not required to conduct additional assessments unless requested to do so by the parents or unless a written notice denying the parental request is provided.

### **C. Assessment Procedures and Instruments**

The district shall ensure the evaluation or reevaluation meets the following requirements:

1. The child shall be assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, motor abilities, and transition needs.
2. Assessments and other materials shall be selected and administered so as not to be discriminatory on a racial or cultural basis.

3. Assessments and other materials shall be provided and administered in the student's native language, and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally and functionally unless it is not feasible to provide or administer ~~do so~~. Attempts to provide a qualified examiner in the student's native language or mode of communication shall be documented.

In all direct contact with a student, the language normally used by the student in the home or learning environment shall be used. For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that which is normally used by the individual (e.g., sign language, Braille, or oral communication).

4. Materials used to assess a student with limited English proficiency shall be selected and administered to ensure that they measure the extent to which the student has a disability and needs special education, rather than solely measuring the student's English language skills. (See Appendix 4C for further information.)
5. A variety of assessment tools and strategies shall be used to gather relevant academic, ~~developmental~~ and functional information about the student, including information provided by the ~~parent and/or adult student~~ parent/adult student and information related to enabling the student to be involved in and progress in the general education curriculum (or, for a preschooler, to participate in appropriate activities).
6. Assessments are used for the purposes for which the assessments or measures are valid and reliable.
7. Assessments shall be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests.
8. Assessments and other evaluation materials shall include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient or standard score.
9. Assessments shall be selected and administered to ensure that if a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those are the factors that the test purports to measure).



10. No single measure or assessment may be used as the sole criterion for determining whether a student is a student with a disability and for determining an appropriate educational program for the student.
11. The district shall use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors.
12. The district shall provide and use assessment tools and strategies that produce relevant information that directly assists persons in determining the educational needs of the student.
13. All services and assessments shall be provided at no expense to the ~~parent and/or adult student~~ parent/adult student.
14. Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with the child's prior and subsequent schools to ensure prompt completion of the full evaluation.
15. The evaluation shall be full and individualized and sufficiently comprehensive to identify all of the child's special education and related service needs, whether or not commonly linked to the disability category.

#### **D. Eligibility Determination**

1. Upon completion of the student's initial evaluation or reevaluation, the evaluation team will consider the findings and determine whether the student meets or continues to meet eligibility criteria found in Section 7 of this chapter. The evaluation team will draw upon information from a variety of sources, such as ~~including aptitude and achievement~~ norm-referenced, standardized tests, parent and/or adult student parent/adult student input, teacher input, physical condition, social or cultural background, adaptive behavior, and functional assessments to interpret evaluation data and determine eligibility.
2. Special Rule for Eligibility Determination

A student cannot be identified as a student with a disability if the primary reason for such a decision is:

1.
  - a. lack of appropriate instruction in reading, including the essential components of reading instruction as defined by the Elementary and Secondary Education

Act—phonemic awareness, phonics, vocabulary development, reading fluency, including oral reading skills and reading comprehension strategies,

~~2.~~

b. lack of appropriate instruction in math, or

~~3.~~

c. Limited English Proficiency.

Related Services:

3. Related Services

Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education. An IEP team may determine that a student found eligible for special education has a need for a related service. However, if a student with a disability needs only a related service and not special education, then the student is not eligible for the related service, unless it is considered to be special education under State standards, as in the case of speech therapy and language therapy.

**E. The Eligibility Report**

The evaluation team shall prepare an Eligibility Report and provide a copy of the report to the ~~parent and/or adult student~~ parent/adult student.

The Eligibility Report shall include:

1. names and positions of all evaluation team members;
2. information regarding the student's need for specially designed instruction (special education and related services);
3. confirmation and supporting data that the disability is not primarily due to lack of appropriate instruction in reading, including the essential components of reading — phonemic awareness, phonics, vocabulary development, reading fluency, including oral reading skills and reading comprehension strategies or math;
4. information about how the student's disability adversely affects his or her educational performance;
5. all data on the student as required in the State Eligibility Criteria for the area of suspected disability;

6. confirmation and supporting data that the student's learning difficulties ~~disability~~ are not primarily due to Limited English Proficiency;
7. the date of the eligibility determination;
8. the name and position of all those administering assessments; and
9. in ~~in~~ the case of Specific Learning Disability eligibility determination, certification in writing that the report reflects each member's conclusions (agreement), and in the case of team member disagreement with the conclusions, a written statement shall be attached to the eligibility report presenting the dissenting team member's conclusions-

## **Section 6. Reevaluation and Continuing Eligibility**

### **A. Reevaluation Requirements**

The district shall ensure that an individual reevaluation of each student with a disability is conducted in accordance with all the required evaluation procedures outlined in this chapter.

A reevaluation:

1. shall occur at least once every three (3) years unless the ~~parent and/or adult student~~ parent/adult student and the district agree in writing that a three ~~3~~-year reevaluation is not necessary. However, an updated Eligibility Report, documenting all eligibility criteria, shall be completed by the reevaluation due date to establish and document continuing eligibility;
2. a reevaluation is not required more than once per year unless the ~~parent and/or adult student~~ parent/adult student and the district agree otherwise. If the parent makes a request within the year and the district does not agree, the district shall send written notice of refusal.

The district shall ensure a reevaluation is conducted more frequently than every three (3) years if:

1. it is determined that the education or related service needs, including academic achievement and functional performance, of the student warrants a reevaluation; or
2. if the ~~parent and/or adult student~~ parent/adult student or the student's teacher requests a reevaluation.

## **B. Reevaluation Prior to Discontinuation**

1. The district shall evaluate a student with a disability before the team determines ~~determining~~ that the student is no longer eligible for special education.
2. Reevaluation is not required in the following two circumstances:
  - a. before the termination of a child's eligibility due to graduation, if the student meets comparable academic requirements that are equally as rigorous as those required of nondisabled students and receives a regular diploma;
  - b. the student has reached the end of the semester in which he or she turns 21 years of age.

Note: Although a reevaluation is not required in these two cases, the district shall provide the student with a summary of his or her academic achievement and functional performance, including recommendations on how to assist the student in meeting his or her post school goals.

## **C. Informing the Parent ~~and/or~~ Adult Student**

Approximately one month before the reevaluation is due, contact shall be made with the ~~parent and/or adult student~~ parent/adult student informing him or her that:

1. the reevaluation will be scheduled within the month, unless the district and ~~parent and/or adult student~~ parent/adult student agree it is unnecessary; and
2. input will be sought from the ~~parent and/or adult student~~ parent/adult student; and
3. ~~the reevaluation process may be accomplished without a meeting, although the parent and/or adult student has the option of requesting a meeting.~~

Note: The IDEA allows the process of reviewing existing data and determining what, if any, additional, assessments are required without a meeting.

## **D. Nature and Extent of Reevaluation**

Before any reassessment of the student, the evaluation team will determine the nature and extent of the student's needs by reviewing existing data. See Section 5 of this chapter for more information regarding the determination of needed data.

1. No Additional Information Needed

- a. If the evaluation team decides that no additional assessments are needed to determine whether the student continues to be eligible for special education services ~~be a student with a disability~~, the district shall provide written notice to the ~~parent and/or adult student~~ parent/adult student of his or her right to request further assessment. ~~to determine whether the student continues to have a disability for the purpose of services under the IDEA 2004.~~
- b. If the ~~parent and/or adult student~~ parent/adult student requests an additional assessment to determine whether the student continues ~~to have a disability~~ meet criteria for special education services under the IDEA 2004, then the district shall conduct the assessment.
- c. If the ~~parent and/or adult student~~ parent/adult student requests an additional assessment for reasons other than eligibility, such as admission to college, then the district shall consider the request and provide written notice of its decision.

## 2. Additional Assessments Needed

Based on recommendations from the evaluation team, the district will seek consent to administer the needed assessments and provide the ~~parent and/or adult student~~ parent/adult student with written notice ~~information~~ regarding proposed assessments. If the ~~parent and/or adult student~~ parent/adult student fails to respond after the district has taken reasonable measures to obtain consent for assessments as part of a reevaluation, the district may proceed with the assessments. The district shall maintain documentation of its measures to seek consent. See section 3B of this chapter for a definition of reasonable measures.

If the ~~parent and/or adult student~~ parent/adult student denies consent to reassess, the student cannot be assessed. However, the district may request SDE mediation or a due process hearing. If the mediation results in consent to assess, or if a hearing officer's decision indicates the assessment is appropriate and there is no appeal, then the student may be assessed. All reevaluation procedures shall be provided at no cost to the ~~parent and/or adult student~~ parent/adult student.

## **E. Eligibility Report for Reevaluations**

The evaluation team will consider evaluation findings and determine whether the student continues to ~~have a disability~~ meet criteria for special education services.

*~~This space intentionally left blank.~~*

The evaluation team is required to prepare an Eligibility Report detailing how review of existing data demonstrates that the student continues to meet eligibility requirements even if no new assessments were conducted. The report shall address each required eligibility component and include results of previous assessments if they are being used to determine eligibility. Refer to Section 5 of this chapter for *I* requirements.

### **Section 7. State Eligibility Criteria**

The district will use the eligibility criteria and assessment procedures set forth by the SDE for placement in special education. This section contains a definition and the eligibility criteria for each specific disability that shall be used to determine whether an individual qualifies as a student with a disability in need of special education.

All disabilities except Specific Learning Disability (SLD) and Developmental Delay (DD) are applicable for students three (3) through twenty-one (21) years of age. For Specific Learning Disability, students must be legal kindergarten age through twenty-one (21) years. Only students ages three (3) through nine (9) can be identified in the Developmental Delay (DD) category. Use of the DD category is optional for the district. If the district elects to use the DD category, it applies only to students from age will use the three (3) through 9 up until their tenth (10<sup>th</sup>) birthday age range, and in addition to the criteria outlined in this chapter.

#### **A. Three-Prong Test of Eligibility**

To demonstrate eligibility for special education services all three of the following criteria shall be met and documented. This is often called the three-prong test for eligibility.

The Eligibility Report shall document each of the following three criteria:

1. the eligibility requirements established by the state for a specific disability are met the student has a disability according to the established Idaho criteria;
2. the disability must have an adverse impact on the student's education, and the student's condition adversely affects academic educational performance; and
3. the student must need special education in order to benefit from his or her education the student needs special education, that is, specially designed instruction and related services;

Meets State Eligibility Requirements: The state eligibility requirements for specific disabilities are listed in this chapter.

Experiences Adverse Effect on Educational Performance: The term “adverse effect on educational performance” is broad in scope. An adverse effect is a harmful or unfavorable influence. Educational performance includes both academic areas (reading, math, communication, etc.) and nonacademic areas (daily life activities, mobility, pre-vocational and vocational skills, social adaptation, self-help skills, etc.). Consideration of all facets of the student’s condition that adversely affect educational performance involves determining any harmful or unfavorable influences that the disability has on the student’s academic or daily life activities.

Adverse Impact: A determination made by the evaluation team that the student’s progress is impeded by the disability to the extent that the student’s educational performance measures significantly and consistently below the level of similar age peers preventing the student from benefiting from general education. Educational performance refers the student’s performance in academic achievement, developmental and or functional skills. The phrases “adverse impact” and “adverse effect” are used interchangeably in this manual and have the same meaning.

Needs Special Education-Specially Designed Instruction: Special education is specially designed instruction, provided at no cost to the parents, to meet the unique needs of a student with a disability. Specially designed instruction means adapted, as appropriate to meet the needs of an eligible student, the content, methodology, or delivery of instruction to address the unique needs of the student that result from the student’s disability and to ensure access of the child to the general curriculum so that he or she can meet Idaho Content Standards or Idaho Common Core Standards that apply to all students.

## **B. Disability Categories**

### **1. Autism Spectrum Disorder**

**Definition:** An Autism Spectrum Disorder is a developmental disability, generally evident before age 3 in the early developmental period, significantly affecting verbal and or nonverbal communication and social interaction, and adversely affecting educational performance. ~~A student who manifests the characteristics of autism after age 3 could be diagnosed as having autism.~~

1.

a. Persistent deficits in social communication and social interaction across multiple contexts, currently or by history:

2

b. Symptoms must be present in the early developmental period, but may not become fully manifest until social demands exceed limited capacities, or may be masked by learned strategies in later life.

3.
  - c. Other characteristics often associated with autism include, but are not limited to, engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and ~~unusual responses~~ hyper- or hypo-reactivity to sensory experiences input.
4.
  - d. Characteristics vary from mild to severe as well as in the number of symptoms present and are not primarily the result of intellectual disability, developmental delay, or an emotional disturbance. ~~Diagnoses may include, but are not limited to, the following autism spectrum disorders: Childhood Disintegrative Disorder, Autistic Disorder, Asperger's Syndrome, or Pervasive Developmental Disorder: Not Otherwise Specified (PDD:NOS).~~

**State Eligibility Criteria for Autism:** An evaluation team will determine that a student is eligible for special education services as a student with autism when all of the following criteria are met:

1.
  - a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted;
2.
  - b. The student has a developmental disability, generally evident ~~before age 3 in the early developmental period~~ that significantly affects social communication and social interaction;
3.
  - c. The student ~~is diagnosed as having a disorder in the~~ must meet the disability definition (above) of an autism spectrum disorder as determined by an evaluation team to include a school psychologist and a speech-language pathologist; or diagnosed in a clinical setting by a psychiatrist, a physician, or a licensed psychologist; A team must consider a private evaluation or diagnosis provided by a parent from a psychiatrist, a physician or a licensed psychologist as meeting the definition of autism spectrum disorder.
4.
  - d. The student's condition adversely affects educational performance;
5.
  - e. The student needs specially ~~education~~ designed instruction.

See Appendix 4A for additional information on determining eligibility for Autism Spectrum Disorders.

***B. Cognitive Impairment***

**2. Intellectual Disability**



**Definition:** ~~Cognitive impairment~~ Intellectual Disability is defined as significantly sub-average intellectual functioning that exists concurrently with deficits in adaptive behavior. These deficits are manifested during the student's developmental period, and adversely affect the student's educational performance.

**State Eligibility Criteria for ~~Cognitive Impairment~~ Intellectual Disability:** An evaluation team will determine that a student is eligible for special education services as a student with an intellectual disability ~~cognitive impairment~~ when all of the following criteria are met:

1. a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
2. b. The student has a full-scale intelligence standard score (IQ) at or below 70, plus or minus the standard error of measurement (at the 95 percent confidence level) of the test being used, ~~– This determination is made based on an assessment by a qualified licensed psychologist or certified school psychologist using an individually administered intelligence test.~~
3. c. The student exhibits concurrent deficits in adaptive functioning unexpected for his or her age in at least two of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, or safety.
4. d. The student's condition adversely affects educational performance.
5. e. The student needs specially designed instruction ~~special education~~.

Caution is advised when assessing students with cultural and language issues to prevent inappropriate identification of these students as having a ~~cognitive impairment~~ intellectual disability. When determining eligibility, tests measuring intellectual ability shall be used with care; that is, only those tests designed and normed for the population being tested may be used. Tests measuring intellectual ability that are translated into another language by the examiner or an interpreter yield invalid test results and shall not be used. ~~Evaluation teams shall consider using nonverbal tests of intellectual ability when the student is culturally or linguistically diverse.~~

C.

### **3. Deaf-Blindness**

**Definition:** A student with deaf-blindness demonstrates both hearing and visual impairments, the combination of which causes such severe communication and other

developmental and educational needs that the student cannot be appropriately educated with special education services designed solely for students with deafness or blindness.

**State Eligibility Criteria for Deaf-Blindness:** An evaluation team will determine that a student is eligible for special education services as a student with deaf-blindness when all of the following criteria are met:

1.
  - a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
2.
  - b. The student exhibits simultaneous hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that the student cannot be accommodated with special education services designed solely for students with deafness or blindness.
3.
  - c. The student is diagnosed by an optometrist or ophthalmologist for vision loss and by an otologist, audiologist, or physician for hearing loss to make a final diagnosis as deaf-blindness.
4.
  - d. The student's condition adversely affects educational performance.
5.
  - e. The student needs specially designed instruction ~~education~~.

~~D.~~

#### 4. Deafness

**Definition:** Deafness is a type of hearing impairment loss that adversely affects educational performance and is so severe that with or without amplification the student is limited in processing linguistic information through hearing.

**State Eligibility Criteria for Deafness:** An evaluation team will determine that a student is eligible for special education services as a student who is deaf when all of the following criteria are met:

1.
  - a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
2.
  - b. The student exhibits a severe hearing impairment loss that hinders his or her ability to process linguistic information through hearing, with or without amplification.

- 3.
- c. The student has been diagnosed by an ~~otologist~~, audiologist, or physician as deaf.
- 4.
- d. The student's condition adversely affects educational performance.
- 5.
- e. The student needs specially designed instruction ~~education~~.

~~E.~~

## **5. Developmental Delay**

**Definition:** The term developmental delay may be used only for students ages three (3) through 9 until their tenth (10<sup>th</sup>) birthday who are experiencing developmental delays as measured by appropriate diagnostic instruments and procedures in one or more of the following areas:

- 1.
- a. cognitive development – includes skills involving perceptual discrimination, memory, reasoning, academic skills, and conceptual development;
- 2.
- b. physical development – includes skills involving coordination of both the large and small muscles of the body (i.e., gross, fine, and perceptual motor skills);
- 3.
- c. communication development – includes skills involving expressive and receptive communication abilities, both verbal and nonverbal;
- 4.
- d. social or emotional development – includes skills involving meaningful social interactions with adults and other children including self-expression and coping skills; or
- 5.
- e. adaptive development – includes daily living skills (e.g., eating, dressing, and toileting) as well as skills involving attention and personal responsibility.

The category of developmental delay should not be used when the student clearly meets the eligibility criteria for another specific disability category.

A student cannot qualify for special education services under developmental delay beyond his or her tenth (10<sup>th</sup>) birthday unless he or she has been determined to be eligible as having a disability other than developmental delay.

**State Eligibility Criteria for Developmental Delay:** An evaluation team may determine that a student is eligible for special education services as a student with a developmental delay when all of the following criteria are met:

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- ~~1.~~
  - a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
- ~~2.~~
  - b. The student is at least three (3) years of age but less than ten (10) years of age.
- ~~3.~~
  - c. The student has developmental and/or learning problems that are not primarily the result of limited English proficiency, cultural difference, environmental disadvantage, or economic disadvantage.
- ~~4.~~
  - d. The student meets either of the following two criteria, in one or more of the broad developmental areas listed below.

Criteria:

- ~~a.~~
  - 1) The student functions at least 2.0 standard deviations below the mean in one broad developmental area (30 percent delay in age equivalency, or functions at or below the 3rd percentile).
- ~~b.~~
  - 2) The student functions at least 1.5 standard deviations below the mean in two or more broad developmental areas (25 percent delay in age equivalency, or functions at or below the 7th percentile).

Broad Developmental Areas:

- ~~a.~~
  - 1) cognitive skills (e.g., perceptual discrimination, memory, reasoning, pre-academic, and conceptual development);
- ~~b.~~
  - 2) physical skills (i.e., fine, gross, and perceptual motor skills);
- ~~c.~~
  - 3) communication skills (i.e., including verbal and nonverbal, and receptive and expressive);
- ~~d.~~
  - 4) social or emotional skills; or
- ~~e.~~
  - 5) adaptive skills, including self-help skills.
- ~~5.~~
  - e. The student's condition adversely affects educational performance.
- ~~6.~~
  - f. The student needs specially designed instruction. ~~education.~~

**F.**

**6. Emotional Disturbance**

**Definition:** A student with an emotional disturbance ~~has a condition exhibiting~~ exhibits one or more of the following characteristics over a long period of time, and to a marked degree, that adversely affects his or her educational performance:

1. a. an inability to learn that ~~cannot be explained by~~ is not primarily the result of intellectual disability; hearing, vision, or motor impairment, sensory, or other health factors impairment;
2. b. an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
3. c. inappropriate types of behavior or feelings under normal circumstances;
4. d. a general pervasive mood of unhappiness or depression; or
5. e. a tendency to develop physical symptoms or fears associated with personal or school problems.
6. f. Schizophrenia

The term *does not* include students who are socially maladjusted unless it is determined they have an emotional disturbance. ~~The term emotional disturbance does include students who are diagnosed with schizophrenia.~~

**State Eligibility Criteria for Emotional Disturbance:** An evaluation team will determine that a student is eligible for special education services as a student with emotional disturbance when all of the following criteria are met:

1. a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
2. b. The student has been documented ~~as having an emotional condition exhibiting~~ characteristics consistent with the criteria in this chapter by one or more of the following: school psychologist, licensed psychologist, psychiatrist, physician, or certified social worker.
3. c. The student has been observed exhibiting one or more of the ~~five~~ six (6) behavioral or emotional characteristics listed in the definition of emotional ~~behavioral disability~~ disturbance.

- 4.
  - d. The characteristic(s) has been observed:
    - 1) for a long period of time (at least 6 months); and
    - 2) by more than one knowledgeable observer; and
    - 3) in more than one setting; and
    - 4) at a level of frequency, duration, and/or intensity that is significantly different from other students' behavior in the same or similar circumstances.
- 5.
  - e. The student's condition adversely affects educational performance in the area of academics, peer and teacher interaction, participation in class activities, and/or classroom conduct.
- 6.
  - f. The student needs ~~special education~~ specially designed instruction.

See Appendix 4A for additional information on determining eligibility for Emotional Disturbance.

G.

## **7. Other Health Impairment (OHI)**

**Definition:** A student classified as having a Other Health Impairment ~~health impairment~~ exhibits limited strength, vitality, or alertness, including heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment that is due to chronic or acute health problems. These health problems may include, but are not limited to, asthma, attention deficit disorder (ADD), attention deficit hyperactivity disorder (ADHD), cancer, diabetes, epilepsy, Fetal Alcohol Syndrome, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, Tourette syndrome, and stroke to such a degree that it adversely affects the student's educational performance.

A student with ADD/ADHD may also be eligible under another category (generally specific learning disability or emotional disturbance) if he or she meets the criteria for that other category and needs special education and related services. All students with a diagnosis of ADD/ADHD are not necessarily eligible to receive special education under the IDEA 2004, just as all students who have one of the other conditions listed under other health impairment are not necessarily eligible, unless it is determined to adversely affect educational performance and require special education.

**State Eligibility Criteria for Other Health Impairment:** An evaluation team will determine that a student is eligible for special education services as a student with a an Other Health Impairment when all of the following criteria are met:

1. a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
2. b. The student exhibits limited strength, vitality, or alertness, including heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment that is due to chronic or acute health problems.
3. c. The student has been diagnosed by a physician with a condition consistent with as having a-an Other Health impairment Impairment described above. In the case of ADD/ADHD, an educational determination may be provided by a school psychologist. Diagnosis from or a licensed psychologist or other diagnostician must be considered by the evaluation team.
4. d. The student's condition adversely affects educational performance.
5. e. The student needs specially designed instruction. ~~education.~~

H.

## **8. Hearing Impairment**

**Definition:** The IDEA disability category of A hearing impairment ~~is~~ describes a permanent or fluctuating hearing loss that adversely affects a student's educational performance but is not included under the category of deafness.

**State Eligibility Criteria for Hearing Impairment:** An evaluation team will determine that a student is eligible for special education services as a student with a hearing impairment when all of the following criteria are met:

1. a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
2. b. The student does not qualify as deaf.
3. c. The student is diagnosed by an otologist, audiologist or physician as having a substantial hearing loss ~~impairment~~.
4. d. The student's condition adversely affects educational performance.
- 5.

- e. The student needs specially designed instruction ~~education~~.

**I.**

**9. Specific Learning Disability**

**~~I. Federal IDEA 2004~~**

**Definition:** Specific Learning Disability (SLD) means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

Specific Learning Disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of ~~cognitive impairment~~ intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

Only children within the age range of legal Kindergarten to age twenty-one (21) years may be identified as a student with a specific learning disability.

**~~H.~~**

**State Eligibility Criteria for Specific Learning Disability:** In determining whether a child has an SLD, the child must meet at a minimum, the following criteria:

- a. The student does not make sufficient progress in response to effective, evidence-based instruction and intervention for the child's age or to meet state-approved grade-level standards when provided with learning experiences and instruction appropriate for the child's age or State approved grade level standards in one or more of the following areas:
  - 1) Oral expression;
  - 2) Listening comprehension;
  - 3) Written expression;
  - 4) Basic reading skills;
  - 5) Reading comprehension;
  - 6) Reading fluency
  - 7) Mathematics calculation; or
  - 8) Mathematics problem solving.

AND

- b. The student demonstrates low achievement in the area(s) of suspected disability listed above as evidenced by a norm-referenced, standardized achievement assessment. For culturally and linguistically diverse students, the



preponderance of evidence must indicate low achievement.

AND

- c. The student demonstrates a pattern of strengths and weaknesses in psychological processing skills that impact learning.

AND

- d. The student's lack of achievement is ***not*** primarily the result of:
  - 1) A visual, hearing, or motor impairment;
  - 2) Intellectual disability ~~Cognitive impairment~~
  - 3) Emotional disturbance
  - 4) Environmental, cultural or economic disadvantage
  - 5) Limited English Proficiency
  - 6) A lack of appropriate instruction in reading, including the essential components of reading;
  - 7) A lack of appropriate instruction in math.

AND

- e. The disability adversely impacts the student's educational performance and the student requires specially designed instruction.

#### **Evaluation Procedures:**

In order to demonstrate the initial eligibility criteria under this category, the following procedures must be followed.

- 1) The evaluation for determining SLD eligibility and requirements for parent notification and involvement shall be conducted in accordance with the procedures detailed in ~~Section 3~~, Chapter 4, Section 3, of ~~the~~ this Idaho Special Education Manual.
- 2) The evaluation must address the eligibility criteria as listed in the ~~Section 2. LD/SLD~~ SLD Eligibility Criteria (see above). To meet these criteria, the following information is required:
  - i. Evidence of insufficient progress in response to effective, evidence-based instruction and intervention indicates the student's performance level and rate of improvement are significantly below that of grade-level peers. This is

documented/demonstrated with the following data:

- a) Data that helps establish that the core curriculum is effective for most students. The most recent whole grade performance data to verify appropriate instruction in the area(s) of concern may include results from the standards-based assessment system. If the referred student belongs to a population of students whose performance is regularly disaggregated, whole grade data for the disaggregated group should also be reviewed and considered.
- b) Information documenting that prior to, or as part of, the referral process, the student was provided appropriate instruction in general education settings. Appropriate instruction includes consideration of both child specific information and whole grade performance data. Child specific data regarding appropriate instruction may include: (1) verification that core (universal) instruction was provided regularly; (2) data indicating that the student attended school regularly to receive instruction; (3) verification that core instruction was delivered according to its design and methodology by qualified personnel; and (4) verification that differentiated instruction in the core curriculum was provided.
- c) Data-based documentation of student progress during instruction and intervention using standardized, norm-referenced progress monitoring measures in the area of disability.
- d) A record of an observation of the student's academic performance and behavior in the child's learning environment (including the general classroom setting) has been conducted by an evaluation team member other than the student's general education teacher. The purpose of the observation is to document how the areas of concern impact the student's performance in the classroom. The observation should also document the name and title of the observer and the site, date, and duration of the observation. The team must decide to:

1. Use information from an observation in routine classroom instruction and monitoring of the child's performance that was conducted before the child was referred for an evaluation; or
2. Have at least one member of the team conduct an observation of the child's academic performance in the educational environment after the child has been referred for an evaluation, and parental consent has been obtained.

AND

- ii. Evidence of low achievement in one or more of the suspected area(s). These include:
  - a) Oral expression;
  - b) Listening comprehension;
  - c) Written expression;
  - d) Basic reading skills;
  - e) Reading comprehension;
  - f) Reading fluency
  - g) Mathematics calculation; or
  - h) Mathematics problem solving

This evidence must indicate performance that is significantly below the mean on a cluster, composite, or 2 or more subtest scores of a norm-referenced, standardized, achievement assessment in the specific academic area(s) of suspected disability. There are cases when the use of norm-referenced assessment is not appropriate, for example, students who are culturally and linguistically diverse. Refer to guidance documents regarding procedures on evaluating students who are culturally and linguistically diverse and the use of preponderance of evidence.

AND

- iii. Evidence of a pattern of strengths and weaknesses in psychological processing skills that impact learning.

An assessment of psychological processing skills is linked to the failure to achieve adequately in the academic area(s) of suspected disability and must rely on standardized assessments. These assessments must be conducted by a professional who is qualified to administer and interpret the assessment results. The student's performance on a psychological processing assessment demonstrates a pattern of strengths and weaknesses that help explain why and how the student's learning difficulties occur. Such tests may include measures of memory, phonological skills, processing speed as well as other measures which explicitly test psychological processing.

AND

- iv. The following criteria must be considered when evaluating the student's low achievement. The team must determine that the student's learning difficulty is not primarily the result of:
  - a) a visual, hearing, or motor impairment
  - b) an intellectual disability ~~Cognitive impairment~~
  - c) an emotional disturbance
  - d) environmental or economic disadvantage
  - e) cultural factors
  - f) Limited English Proficiency (LEP)

~~*This space intentionally left blank.*~~

## **10. Multiple Disabilities**

**Definition:** Multiple disabilities are two or more co-existing severe impairments, one of which usually includes ~~an intellectual disability~~ ~~cognitive impairment~~, such as ~~cognitive impairment~~ ~~intellectual disability/blindness~~, ~~cognitive impairment~~ ~~intellectual disability~~ /orthopedic, etc. Students with multiple disabilities exhibit impairments that are likely to be life long, significantly interfere with independent functioning, and may necessitate environmental modifications to enable the student to participate in school and society. The term does not include deaf-blindness.

**State Eligibility Criteria for Multiple Disabilities:** An evaluation team will determine that a student is eligible for special education services as a student with multiple disabilities when all of the following criteria are met:

- 1.
  - a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.

- ~~2.~~
  - b. The student meets eligibility criteria for severe concomitant impairments, the combination of which causes such significant educational problems that the student cannot be accommodated by special education services designed solely for one of the disabilities.
- ~~3.~~
  - c. The student meets State Eligibility Criteria as outlined for each disability category.
- ~~4.~~
  - d. The student's condition adversely affects educational performance.
- ~~5.~~
  - e. The student needs specially designed education.

~~K.~~

### **11. Orthopedic Impairment**

**Definition:** Orthopedic impairment means a severe physical limitation that adversely affects a student's educational performance. The term includes impairments caused by congenital anomaly (clubfoot, or absence of an appendage), an impairment caused by disease (poliomyelitis, bone tuberculosis, etc.), or an impairment from other causes (cerebral palsy, amputations, and fractures or burns that cause contracture).

**State Eligibility Criteria for Orthopedic Impairment:** An evaluation team will determine that a student is eligible for special education services as a student with an orthopedic impairment when all of the following criteria are met:

- ~~1.~~
  - a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
- ~~2.~~
  - b. The student exhibits a severe orthopedic impairment. The term includes congenital anomalies, impairments caused by disease, and impairments from other causes that are so severe as to require special education services.
- ~~3.~~
  - c. The student has documentation of the condition by a physician or other qualified professional.
- ~~4.~~
  - d. The student's condition adversely affects educational performance.
- ~~5.~~
  - e. The student needs specially designed education.

~~L.~~

### **12. Speech or Language Impairment: Language**

**Definition:** A language impairment exists when there is a disorder or delay in the development of comprehension and/or the uses of spoken or written language and/or other symbol systems. The impairment may involve any one or a combination of the following:

1. a. the form of language (morphological and syntactic systems);
2. b. the content of language (semantic systems); and/or
3. c. the function of language in communication (pragmatic systems).

A language disorder does not exist when language differences are due to non-standard English or regional dialect or when the evaluator cannot rule out environmental, cultural, or economic disadvantage as primary factors causing the impairment.

**State Eligibility Criteria for Language Impairment:** An evaluation team will determine that a student is eligible for special education and related services as a student who has a language impairment when all of the following criteria are met:

1. a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
2. b. At least two procedures, at least one of which yields a standard score, are used to assess receptive language and/or expressive language.
3. c. The student has attained scores on a standardized measure that are 1.5 standard deviations or more below the mean, or at or below the 7<sup>th</sup> percentile, in either receptive or expressive language.
4. d. The student's disability adversely affects educational performance.
5. e. The student needs specially designed instruction ~~education~~. (Speech/language therapy can be specially designed instruction ~~education~~ or a related service.)

Caution is advised when evaluating a student whose native language is other than English. The acquisition of the English language is not to be mistaken as a language impairment.

**M.**

### **13. Speech or Language Impairment: Speech**

The term speech impairment includes articulation/phonology disorders, voice disorders, or fluency disorders that adversely impact a child's educational performance. The

following eligibility criteria and minimum assessment procedures have been established for all three types of speech impairments.

1.

**a. Articulation/Phonology Disorder**

**Definition:** Articulation is the ability to speak distinctly and connectedly. Articulation disorders are incorrect productions of speech sounds including omissions, distortions, substitutions, and/or additions that may interfere with intelligibility. Phonology is the process used in our language that has common elements (sound patterns) that affect different sounds. Phonology disorders are errors involving phonemes, sound patterns, and the rules governing their combinations.

a.

1) An articulation/phonology disorder exists when:

(1)

i. the disorder is exhibited by omissions, distortions, substitutions, or additions;

(2)

ii. the articulation interferes with communication and calls attention to itself; and

iii. the disorder adversely affects educational or developmental performance.

(3)

b.

2) An articulation/phonology disorder does not exist when:

(1)

i. errors are temporary in nature or are due to temporary conditions such as dental changes;

(2)

ii. differences are due to culture, bilingualism or dialect, or from being non-English speaking; or

(3)

iii. there are delays in developing the ability to articulate only the most difficult blends of sound or consonants within the broad range for the student's age.

**State Eligibility Criteria for Articulation/Phonology Disorder:** An evaluation team will determine that a student is eligible for special education

and related services as a student who has an articulation/phonology disorder (speech impairment) when all of the following criteria are met:

a.

- 1) An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.

b.

- 2) At least two procedures are used to assess the student, one of which yields a standard score.

c.

- 3) The student must have a score that is at least 1.5 standard deviations below the mean, or at or below the 7th percentile, on a standardized articulation/phonological assessment, or the speech impairment is judged as moderate on the standardized measure for students ages three (3) through twenty-one (21) years.

d.

- 4) The student's disability adversely affects educational performance.

e.

- 5) The student needs specially designed instruction ~~education~~. (Speech/language therapy can be specially designed instruction ~~special education~~ or a related service.)

2.

#### **b. Fluency Disorder**

**Definition:** A fluency disorder consists of stoppages in the flow of speech that is abnormally frequent and/or abnormally long. The stoppages usually take the form of repetitions of sounds, syllables, or single syllable words; prolongations of sounds; or blockages of airflow and/or voicing in speech.

a.

- 1) A fluency disorder exists when an abnormal rate of speaking, speech, interruptions, repetitions, prolongations, blockages of airflow and/or voicing interferes with effective communication.

b.

- 2) A fluency disorder does not exist when developmental dysfluencies are part of normal speech development and do not interfere with educational or developmental performance.

**State Eligibility Criteria for Fluency Disorder:** An evaluation team will determine that an individual is eligible for special education and related services as a student who has a fluency disorder (speech impairment) when all of the following criteria are met:



- a.
  - 1) An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
- b.
  - 2) The student has a fluency rating of moderate or severe on the Fluency Communication Rating Scale for student's age 3 through 21 years. See the documents section of this chapter for the Fluency Communication Rating Scale.
- c.
  - 3) The student's disability adversely affects educational performance.
- d.
  - 4) The student needs specially designed instruction ~~education~~. (Speech/language therapy can be a primary ~~special education~~ or a related service.)

3.

**c. Voice Disorder**

**Definition:** Voice disorders are the absence or abnormal production of voice quality, pitch, intensity, or resonance. Voice disorders may be the result of a functional or an organic condition.

A student who has a suspected laryngeal-based voice disorder and has not been evaluated by an ear, nose, and throat (ENT) physician (~~ENT~~) (otorhinolaryngologist/otolaryngologist) may not receive voice therapy services from a speech-language pathologist.

- a.
  - 1) A voice disorder exists when the vocal characteristics of quality, pitch, intensity, or resonance:
    - i. interfere with communication;
    - ii. draw unfavorable attention to the speaker;
    - iii. adversely affect the speaker or listener; or
    - iv. are inappropriate to the age and gender of the speaker.
- b.
  - 2) A voice disorder does not exist when the vocal characteristics of quality, pitch, intensity, or resonance:
    - i. are the result of temporary physical factors such as allergies, colds, or abnormal tonsils or adenoids;

2)

ii. are the result of regional dialectic or cultural differences or economic disadvantage; or

3)

iii. do not interfere with educational or developmental performance.

**State Eligibility Criteria for Voice Disorder:** An evaluation team will determine that a student is eligible for special education and related services as a student who has a voice disorder (speech impairment) when all of the following criteria are met:

a.

1) An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.

b.

2) The student has a voice production rating of moderate or severe on the Voice Rating Scale for students aged 3 through 21 years. See the documents section of this chapter for the Voice Rating Scale.

c.

3) An ear, nose, and throat (ENT) physician's (otorhinolaryngologist) statement documents that voice therapy is not contraindicated.

d.

4) The student's disability adversely affects educational performance.

e.

5) The student needs specially designed instruction ~~education~~.  
(Speech/language therapy can be a primary special education or a related service.)

See the documents section of this chapter for information on documenting adverse effects on educational performance for students with speech/language disorders.

NOTE: A student may receive speech or language services if he or she under is eligible for special education and needs speech or language services as a related service in order to benefit from special education without meeting the eligibility criteria for speech and language impairment.

N.

#### **14. Traumatic Brain Injury**

**Definition:** Traumatic brain injury refers to an acquired injury to the brain caused by an external physical force resulting in a total or partial functional disability or

psychosocial impairment, or both, that adversely affects educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas such as cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem solving, sensory, perceptual and motor abilities, psychosocial behavior, physical functions, information processing, and speech. The term does not apply to congenital or degenerative brain injuries or to brain injuries induced by birth trauma.

**State Eligibility Criteria for Traumatic Brain Injury:** An evaluation team will determine that a student is eligible for special education services as a student who has a traumatic brain injury when all of the following criteria are met:

1.
  - a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.
2.
  - b. The student has an acquired injury to the brain caused by an external physical force resulting in a total or partial functional disability or psychosocial impairment, or both.
3.
  - c. The student has documentation of ~~diagnosis by a licensed physician as having~~ a traumatic brain injury.
4.
  - d. The student's condition adversely affects educational performance.
5.
  - e. The student needs specially designed instruction. ~~education.~~

0.

## **15. Visual Impairment Including Blindness**

**Definition:** Visual impairment refers to an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness. Partial sight refers to the ability to use vision as one channel of learning if educational materials are adapted. Blindness refers to the prohibition of vision as a channel of learning, regardless of the adaptation of materials.

**State Eligibility Criteria for Visual Impairment:** An evaluation team will determine that a student is eligible for special education services as a student with a visual impairment when all of the following criteria are met:

1.
  - a. An evaluation that meets the procedures outlined in Section 5 of this chapter has been conducted.

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- 2.
  - b. The student has documentation of a visual impairment, not primarily perceptual in nature, resulting in measured acuity of 20/70 or poorer in the better eye with correction, or a visual field restriction of 20 degrees as determined by an optometrist or ophthalmologist.
- 3.
  - c. The student's physical eye condition, even with correction, adversely affects educational performance.
- 4.
  - d. The student needs specially designed instruction ~~education~~.

**Documents**

**Documents**

**Documents**

**Documents**

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**Documents**

**REGRESSED INTELLIGENCE QUOTIENT SCORES**

**Instructions:**

A conversion table to regress intelligence quotient (IQ) scores is located on the following pages. The table has 4 columns. Column 1 indicates full scale IQ scores. Columns 2-4 indicate corresponding correlation scores. Follow the instructions below to determine the regressed IQ score to be used in determining whether the 15-point discrepancy between ability and achievement exists.

1. Determine the correlation between the intellectual measure and the achievement measure that was used to assess the student. Correlations are usually stated in the instructor's manual for each test.
2. Determine the appropriate column (2, 3, or 4) to use based on the correlation between the two tests. The table provides correlations at .7, .6, and .5. Use .6 if you cannot find the correlation in the instructor's manual or test literature.
3. Locate the student's full scale IQ score on the intellectual measure in column 1 of the table.
4. Follow the IQ score across to a correlation score in the appropriate column. That score is the regressed IQ score.
5. Subtract the student's actual achievement standard score from the regressed IQ score.

**Example:**

If the correlation between the IQ test and the achievement test is .6 and the student's full scale score is 86, the student's regressed IQ score would be 92.

Regressed full-scale IQ score	92
Minus achievement standard score	<u>-75</u>
Equals discrepancy	17

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**Conversion Table to Regress IQ Scores**

<b>Correlation between full-scale IQ score and achievement scores</b>			
<b>Full-Scale IQ Score</b>	<b>7-Correlation</b>	<b>6-Correlation</b>	<b>5-Correlation</b>
150	135	130	125
149	134	129	125
148	134	129	124
147	133	128	124
146	132	128	123
145	132	127	123
144	131	126	122
143	130	126	122
142	129	125	121
141	129	125	121
140	128	124	120
139	127	123	120
138	127	123	119
137	126	122	119
136	125	122	118
135	125	121	118
134	124	120	117
133	123	120	117
132	122	119	116
131	122	119	116
130	121	118	115
129	120	117	115
128	120	117	114
127	119	116	114
126	118	116	113
125	118	115	113
124	117	114	112
123	116	114	112
122	115	113	111
121	115	113	111
120	114	112	110
119	113	111	110
118	113	111	109
117	112	110	109
116	111	110	108
115	111	109	108
114	110	108	107
113	109	108	107

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112	108	107	106
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<b>Full-Scale IQ Score</b>	<b>7 Correlation</b>	<b>6 Correlation</b>	<b>5 Correlation</b>
111	108	107	106
110	107	106	105
109	106	105	105
108	106	105	104
107	105	104	104
106	104	104	103
105	104	103	103
104	103	102	102
103	102	102	102
102	101	101	101
101	101	101	101
100	100	100	100
99	99	99	100
98	99	99	99
97	98	98	99
96	97	98	98
95	97	97	98
94	96	96	97
93	96	96	97
92	94	95	96
91	94	95	96
90	93	94	95
89	92	93	95
88	92	93	94
87	91	92	94
86	90	92	93
85	89	91	93
84	89	90	92
83	88	90	92
82	87	89	91
81	87	89	91
80	86	88	90
79	85	87	90
78	85	87	89
77	84	86	89
76	83	86	88
75	83	85	88
74	82	84	87
73	81	84	87

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72	80	83	86
71	80	83	86
70	79	82	85

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**FLUENCY COMMUNICATION RATING SCALE**

Student: \_\_\_\_\_

School: \_\_\_\_\_ Date: \_\_\_\_\_

	<b>Nondisabling Condition</b>	<b>Mild</b>	<b>Moderate</b>	<b>Severe</b>
<b>Frequency</b>	Frequency of dysfluent behavior is within normal limits for student's age, gender, and speaking situation and/or less than 1 stuttered word per minute.	Transitory dysfluencies are observed in specific situation(s) and/or 1-2 stuttered words per minute.	Frequent dysfluent behaviors are observed in specific speaking situations(s) and/or 4-10 stuttered words per minute.	Habitual dysfluent behaviors are observed in a majority of speaking situations and/or more than 10 stuttered words per minute.
<b>Descriptive Assessment</b>	Speech flow and time patterning are within normal limits. Developmental dysfluencies may be present.	Rate of speech interferes with intelligibility. Sound, syllable, and/or word repetitions or prolongations are present with no other secondary symptoms. Fluent speech periods predominate.	Rate of speech interferes with intelligibility. Sound, syllable, and/or prolongations are present. Secondary symptoms including blocking, avoidance, and physical concomitants may be observed.	Rate of speech interferes with intelligibility, sound, syllable, and/or word repetitions and/or prolongations are present. Secondary symptoms predominate. Avoidance and frustration behaviors are observed.
Comments:				

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**VOICE RATING SCALE**

Student: \_\_\_\_\_ School: \_\_\_\_\_ Date: \_\_\_\_\_

	<b>Nondisabling Condition</b>	<b>Mild Descriptive</b>	<b>Moderate Descriptive</b>	<b>Severe Wilson Voice Profile Scale</b>
<b>Pitch</b>	Pitch is within normal limits.	There is a noticeable difference in pitch that may be intermittent.	There is a persistent, noticeable inappropriate raising or lowering of pitch for age and gender, or evidence of dysphonia.	+3 Pitch -3 Pitch -2 Pitch +2 Pitch
<b>Intensity</b>	Intensity is within normal limits.	There is a noticeable difference in intensity that may be intermittent.	There is a persistent, noticeable inappropriate increase or decrease in the intensity of speech, or the presence of aphonia.	-3 Intensity +2 Intensity -2 Intensity
<b>Quality</b>	Quality is within normal limits.	There is a noticeable difference in quality that may be intermittent.	There is a persistent, noticeable breathiness, glottal fry, harshness, hoarseness, tenseness, strident, or other abnormal vocal quality.	-2 Laryngeal +3 Laryngeal +2 Laryngeal - 3 Laryngeal
<b>Resonance</b>	Nasality is within normal limits.	There is a noticeable difference in nasality that may be intermittent.	There is a persistent noticeable cul-de-sac, hyper- or hypo-nasality, or mixed nasality.	-2 Resonance +3 Resonance +4 Resonance
<b>Description of Current Physical</b>	No consistent laryngeal pathology;	Laryngeal pathology may be present. Physical	Probable presence of laryngeal pathology. Physical factors may	Physical factors may include:

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<b>Condition</b>	physical factors influencing quality, resonance, or pitch, if present at all, are temporary and may include allergies, colds, or abnormal tonsils and adenoids.	factors indicated in moderate and/or severe levels may be present.	include nodules, polyps, ulcers, edema, partial paralysis of vocal folds, palatal insufficiency, enlarged/insufficient tonsils and/or adenoids, neuromotor involvement, or hearing impairment.	<ul style="list-style-type: none"><li>- unilateral or bilateral paralysis of vocal folds</li><li>- larynx-ectomy</li><li>- psycho-somatic disorders</li><li>- neuromotor involvement of larynx muscles, i.e., cerebral palsy</li></ul>
Comments:				

**DOCUMENTATION OF ADVERSE EFFECTS  
ON EDUCATIONAL PERFORMANCE  
FOR STUDENTS WITH SPEECH/LANGUAGE DISORDERS**

Documentation of adverse effects on educational performance can be gathered from a thorough assessment of communication skills. The assessment shall include student, parent, and teacher input.

Information shall be recorded by the speech-language pathologist (SLP) on the *Eligibility Report* form.

An assessment of a student's ability to communicate, rather than isolated skill assessment, will provide information on how the impairment affects the student overall. The following errors and problems should be considered when determining how the student's ability to communicate may adversely affect educational performance:

1. Sound errors, voice quality, or fluency disorders inhibit the student from reading orally in class, speaking in front of the class, or being understood by teachers, peers, or family members.
2. Sound errors, voice quality, or fluency disorders embarrass the student. Peer relationships suffer as a result, or peers may make fun of the student.
3. Sound errors cause the student to make phonetic errors in spelling or have difficulty in phonics.
4. Grammatical errors create problems with a student's orientation in time.
5. Morphological errors inhibit the student from using or making complete sentences.
6. Semantic problems slow the student's ability to follow directions, give directions, make wants and needs known, make oneself understood, relate information to others, or fully participate in daily living.

**Chapter 5**

**INDIVIDUALIZED EDUCATION PROGRAMS**

**Chapter Contents**

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## Chapter 5 Individualized Education Programs

If a student is eligible for special education services, they have met the requirements of eligibility under the Individuals with Disabilities Education Act of 2004 (IDEA 2004).; Eligibility requires a student to meet the following three prongs: 1) the student has ~~including~~ a disability that meets the criteria;; 2) the disability adversely affects the student's educational performance;; and 3) the student requires specially designed instruction.

Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a student with a disability including instruction conducted in the classroom, the home, hospitals, institutions, and other settings. The definition of special education also includes the following: instruction in physical education, speech/language pathology, travel training, and vocational education.

Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction to (1) address the unique needs of the student that result from his or her disability and (2) to ensure access to the general curriculum so that the student can meet the Idaho Content Standards and Idaho Common Core Standards that apply to all students.

The Individualized Education Program (IEP) is a written document that is developed for each eligible student with a disability and documents the specially designed instruction and related services. The IEP is the product of a team collaboration among a ~~parent and/or adult student~~ parent/adult student, district personnel, and other IEP team members who, through full and equal participation, identify the unique needs of a student with a disability and plan the special education services to meet those needs.

In developing each student's IEP, the IEP team shall consider: 1) the strengths of the student; 2) the concerns of the parents for enhancing the education of their child; 3) the results of the initial or most recent evaluation of the student; and 4) the academic achievement, developmental, and functional needs of the student.

- ~~▶ The strengths of the student;~~
- ~~▶ The concerns of the parents for enhancing the education of their child;~~
- ~~▶ The results of the initial or most recent evaluation of the student; and~~
- ~~▶ The academic achievement, developmental, and functional needs of the student.~~

### Section 1. IEP Initiation

#### A. Purpose of Meeting

The primary purpose of an IEP team meeting is to design an IEP that shall meet the unique needs of a student with a disability. The IEP team ~~plans~~ determines the special education and related



services reasonably calculated to enable the student to receive educational benefits in the least restrictive environment. The ~~parent/adult student~~ shall be invited to the meeting and ~~in order to participate meaningfully, the parent and/or adult student should be informed of his or her role as a team member.~~ (Note: transition age students shall be invited to the IEP meeting). The ~~parent and/or adult student, district personnel, and other IEP team members~~ should come prepared to discuss specific information about the student's individual needs and the type of services to be provided to address those needs.

The meeting format should invite open discussion that allows participants to identify and consider all the relevant needs of the student related to ~~their~~ his or her disability and what is necessary to provide access to, participate in, and make progress in the general education curriculum. Placement decisions shall be considered *after* the special education services are determined. ~~Placement is based on the IEP services and accommodations~~ and shall not be the determining factor in developing the IEP content.

Informal or unscheduled conversations involving district personnel on various issues (e.g., teaching methodology, lesson plans, or coordination of service provisions) are not considered a meeting as long as no decisions are made regarding issues addressed on the student's IEP. A meeting does not include preparatory activities in which district personnel engage to develop a proposal or a response to a ~~parent and/or adult student~~ parent/adult student proposal that will be discussed at a later meeting.

## **B. Team Decision Making**

The IEP meeting serves as a communication vehicle between ~~the parent and/or adult student, district personnel, and other IEP team members~~ that enables enabling them, as equal participants, to make joint, informed decisions regarding the student's special education services. All members of the IEP team are expected to work toward consensus regarding IEP decisions the services that will be included in the student's IEP to ensure that the student he or she receives a free appropriate public education (FAPE). ~~Consensus means that all members are in general agreement regarding what is written.~~ Consensus means consent of all IEP team members to support the decision of the team, which requires that all members of the team have had an opportunity for meaningful participation.

If there is a lack of consensus between the ~~parent and/or adult student~~ parent/adult student, district personnel, and other IEP team members regarding an IEP decision, then school personnel on the IEP team should seek consensus and make the decision subject to the due process rights of the ~~parent and/or adult student~~ parent/adult student. If there is a lack of consensus among school personnel, then the district representative on the IEP team shall make the decision at the IEP meeting subject to the due process rights of the parents.

If there is a lack of consensus between the ~~parent and/or adult student~~ parent/adult student, district personnel, and other IEP team members regarding an IEP decision, then school personnel on the IEP team should seek consensus and make the decision, providing written notice to the

~~parent/adult student. subject to the due process rights of the parent and/or adult student~~  
~~parent/adult student. If there is a lack of consensus among school personnel, then the district~~  
~~representative on the IEP team shall make the decision and provide written notice to the~~  
~~parent/adult student. The parent/adult student should be made aware of at the IEP meeting~~  
~~subject to the due process rights of the parents. The district shall follow the procedures in Section~~  
2J of this chapter, “Parent and/or Adult Student Parent/Adult Student Adult Student Objection to  
the IEP;” if necessary and their procedural safeguards, including due process rights.

### **C. When IEP Meetings Are Held**

An IEP meeting shall be held for one or more of the following reasons:

1. ~~To to develop and implement an IEP within 60 thirty (30) calendar days of receiving~~  
~~parent and/or adult student consent for initial evaluation, excluding periods when regular~~  
~~school is not in session for 5 or more consecutive days~~ determination that the student  
needs special education and related services; ~~With the exception that the meeting to~~  
~~develop the IEP shall be held within 30 days of a determination that the student needs~~  
~~special education and related services. Refer to Chapter 4, Section 3.E regarding~~  
~~additional timeline exceptions. IEP shall be implemented as soon as possible following~~  
~~the meeting during which the IEP was developed;~~
2. ~~To to review the IEP periodically, but no longer than one year (365 days) from the date~~  
~~of development of the current IEP; An~~ with the IEP shall be in effect at the beginning of  
each school year;
3. ~~When when another agency fails to deliver transition or other services outlined in the~~  
~~IEP;~~
4. ~~To to consider revisions to the IEP if there is any lack of expected progress toward~~  
~~annual goals and in the general education curriculum, where appropriate;~~
5. ~~At at the reasonable request of any member of the IEP team;~~(Note: Written notice shall  
be provided the parent/adult student who requests an IEP meeting when a district refuses  
to hold one);
6. ~~To to review behavioral intervention strategies and/or develop a behavioral plan as part~~  
~~of the IEP; or~~
7. ~~To to address the IDEA 2004 discipline requirements (see Chapter 12); or~~
8. to review the results of any reevaluation or independent educational evaluation (IEE).

NOTE: Under the IDEA 2004, an IEP team meeting may not be required to amend the IEP (see IEP Amendments).

#### **D. IEP Team Members and Roles**

The IEP team ~~means~~ is a group of individuals ~~who are~~ responsible for developing, reviewing, or revising an IEP for a student with a disability.

~~NOTE: The general education teacher, special education teacher, district representative, or individual who can interpret implications of evaluation results may be excused from an IEP meeting, in whole or in part, if the parent and/or adult student and district agree to this in writing. If the meeting deals with the excused member's areas, he or she shall provide written input to the IEP team prior to the meeting. Written input shall include substantive data (e.g., based on assessment, providing meaningful guidance to the team, regarding the purpose of the meeting, reflecting on general education curriculum). If a district representative is excused, a staff member in attendance shall have the authority to bind the district to the decisions of the team.~~

<b>Role</b>	<b>Description</b>
Parent of the student <i>or</i> Adult Student if rights have transferred	<p>The term “parent” refers to a biological or adoptive parent, foster parent, a judicially decreed guardian (does not include State agency personnel if the student is a ward of the state), a person acting in place of a parent, or a surrogate parent who has been appointed by the district. The term “acting in place of a biological or adoptive parent” includes persons such as a grandparent, stepparent, or other relative with whom the student lives as well as persons who are legally responsible for a student’s welfare. A foster parent may act as a parent if the natural parent’s authority to make educational decisions on behalf of his or her child has been terminated by law. A foster parent shall be an individual who is willing to make educational decisions required of a parent, and has no interest that would conflict with the interests of the student. If more than the biological or adoptive parents meet the definition of parent, the biological or adoptive parents serve as the parents in the IEP process, unless a judicial decree or order identifies a specific person or persons to make educational decisions for the student.</p> <p>An “adult student” is a student with a disability who is <u>eighteen</u> (18) years of age or older to whom special education rights have transferred under the IDEA 2004 and Idaho Code. (See Chapter 11, Section 2C, for more information.) In this case, the parent may attend the IEP meeting as an individual who has knowledge or special expertise regarding the student at the invitation of the adult student or the district.</p>

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Role	Description
District Representative	The district representative or designee shall be qualified to provide or supervise the provision of special education to meet the unique needs of students with disabilities. The representative shall be knowledgeable about the general education curriculum and about the availability of resources in the district. They <del>should</del> <u>shall</u> have the authority to allocate resources and to ensure that <u>the IEP will be implemented</u> <del>whatever services are outlined in the IEP shall be provided</del> . Examples of the district representative include the building principal, the special education director, the district superintendent and others who meet the criteria described above. The district representative may be another member of the IEP team if all the criteria above are met.
Special Education Teacher/Provider—not less than one	This individual <del>will</del> generally <u>will</u> be the student's special education teacher or service provider who is responsible for implementing the student's IEP. <del>In</del> <u>For example, in</u> the case of a student receiving services from a speech-language pathologist, but not a special education teacher, it <del>is</del> <u>would be</u> more appropriate for the speech-language pathologist to fill this role on the IEP team.
General Education Teacher—not less than one	<p>A general education teacher of the student is required to participate in developing the IEP if a student is, or may be, participating in the general education environment. Regardless, a representative that is knowledgeable of the general education curriculum <u>at the student's grade level</u> shall be present.</p> <p>For preschool-age students, the general education teacher may be the Kindergarten teacher or an appropriate designee. Designees at the preschool level may include a care provider, Head Start teacher, or community preschool teacher if that person meets State and/or national licensing standards.</p>
Individual who can interpret evaluation results and implications	This person may be someone who participated in the evaluation of the student. He or she shall be able to explain the results, the instructional implications, and the recommendations of the evaluation.
Student	Whenever appropriate, the IEP team includes the student with a

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Role	Description
	disability. A student shall be invited by the district to attend any IEP meeting at which post-secondary goals and transition services needed to assist the student in reaching those goals will be discussed. If the student does not attend the IEP team meeting, the <del>public district agency</del> shall take other steps to ensure that the student's preferences and interests are considered.
Representative of a Private School (if applicable)	If a student is enrolled in or referred to a private school, the district shall ensure that a representative of the private school is invited to the IEP meeting. If a representative cannot attend, the district shall use other methods to ensure participation by the private school, including individual or conference telephone calls.
Representative of Transition Agency(s) ( <del>Parental</del> <u>Parent/Adult student</u> consent shall be obtained <u>prior to inviting in order for</u> the Transition Agency Representative to participate in the IEP team meeting).	If transition services are being discussed, a representative of any <u>participating public</u> agency that is likely to be responsible for providing or paying for transition services shall be invited ( <u>with the prior consent of a parent/adult student</u> ). If a representative does not attend, steps <del>shall</del> <u>should</u> be taken to obtain participation from the agency in transition planning.
Part C Coordinator or Representative	<del>At the request of the parent of a student who previously was served under Part C, the Part C coordinator or other representative of the Part C system will be invited to the initial IEP meeting. A Part C coordinator or other representative may be invited by the district to the IEP meeting. Parents shall be informed of their right to request an invitation of an Infant Toddler Program representative(s) to the initial IEP meeting.</del>
Other	At the discretion of the <del>parent and/or adult student</del> <u>parent/adult student</u> or the district, other individuals who have knowledge or special expertise regarding the student, including related service personnel, may be included as IEP team members. The determination of having knowledge and special expertise regarding the student shall be made by the <del>parent and/or adult student</del> <u>parent/adult student</u> or district person who invited the individual to

Role	Description
	be a member of the IEP team.

NOTE: The general education teacher, special education teacher, district representative, or individual who can interpret implications of evaluation results may be excused from an IEP meeting, in whole or in part, if the parent/adult student and district agree in writing. If the meeting deals with the excused member's areas of the curriculum and/or services, he or she shall provide written input to the IEP team prior to the meeting. Written input shall include substantive data (e.g., based on assessment, providing meaningful guidance to the team, regarding the purpose of the meeting, reflecting on general education curriculum). If a district representative is excused, a staff member in attendance shall have the authority to bind the district to the decisions of the team.

### **E. The General Educator's Role in IEP Development**

If a student is or may be participating in the general education curriculum or environment, not less than one of the student's general education teachers, ~~who are responsible for implementing any portion of the IEP~~ shall participate to the extent appropriate in developing the IEP. ~~Regardless, a representative that is knowledgeable of the general education curriculum shall participate.~~ The general education teacher's role in the development, review, and revision of the IEP includes:

1. ~~discussion~~ Discussion of the student's involvement and progress in the general education curriculum, if known;
2. ~~determination~~ Determination of appropriate positive behavioral interventions and other strategies for the student; and
3. ~~determination~~ Determination of supplementary aids and services, program accommodations/adaptations, and supports for school personnel.

### **F. Invitation to IEP Team Meetings**

To the extent possible, the district should encourage the consolidation of all IEP team meetings, including meetings that may involve eligibility, reevaluation and IEP development.

The district shall ~~meet~~ do the following requirements.

1. Schedule the meeting at a place and time mutually agreed on by the ~~parent and/or adult student~~ parent/adult student and the district.

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2. Invite the ~~parent and/or adult student~~ parent/adult student, and if applicable the secondary transition age student, to the meeting early enough to ensure that he or she can attend. The district shall keep a record of this invitation. The invitation shall include the following:
  - a. the purpose(s), time, and location of the meeting;
  - b. who will attend the meeting by role; ~~and~~
  - c. information regarding the parent's ~~and/or~~ adult student's right to bring other people to the meeting and invite a Part C representative if appropriate; and
  - d. notification that post-secondary goals and transition services will be discussed, as applicable.

The invitation should clarify the parent's/ ~~and/or~~ adult student's (or secondary transition age student's) role on the team and request that he or she come prepared to discuss the unique needs and characteristics of the student, the types of services ~~that may be~~ needed, and the goals that would indicate the success of the services.

3. Invite the student, if appropriate or required, to attend and participate in his or her IEP team meeting. If the student is a minor, the parent shall make the decision regarding the student's attendance. If a purpose of the meeting is to consider transition, and the student does not attend, the district shall take other steps to ensure that the student's preferences and interests are considered.
4. The invitation may be either written or oral. In either case, the district shall document that all the required components noted in item 2 above were included in the invitation. In addition, the ~~parent and/or adult student~~ parent/adult student shall be ~~provided with~~ given a physical copy of the *Procedural Safeguards Notice* once annually, preferably at the annual review, unless the parent requests additional copies.
5. When one of the purposes of the IEP team meeting is to consider transition services, the invitation shall ~~also~~:
  - a. indicate this purpose;
  - b. ~~indicate that the district shall~~ invite the student; and
  - c. identify any other agency that will be invited, with parent's ~~and/or~~ adult student's consent, to send a representative.
6. The district shall take appropriate action to ensure that a ~~parent and/or adult student~~ parent/adult student understands the proceedings at an IEP team meeting, including

- arranging for an interpreter for a ~~parent and/or adult student~~ parent/adult student who has a ~~hearing impairment~~ hearing loss or whose native language is other than English.
7. The IEP team may meet without the ~~parent and/or adult student~~ parent/adult student if he or she cannot attend the meeting or cannot be convinced to attend the meeting. However, the district shall document its attempts to arrange a mutually agreed upon time and place for the meeting. Documentation could include records of telephone calls or conversations, copies of correspondence sent to the ~~parent and/or adult student~~ parent/adult student and any responses received, and detailed records of any visits made to the ~~parent and/or adult student~~ parent/adult student. If a meeting is held without the ~~parent and/or adult student~~ parent/adult student, the district shall offer and document alternative methods, such as conference calls, to gain his or her participation in the development of the IEP.

Alternatives to physical meetings such as video and telephone conferencing may take the place of physical IEP meetings if the ~~parent and/or adult student~~ parent/adult student and district agree.

## **Section 2. IEP Development**

Nothing requires additional information be included in a student's IEP beyond what is explicitly required by IDEA 2004 or requires the IEP team to include information under one component of a student's IEP that is already contained under another component of the student's IEP.

NOTE: IEP team meeting minutes are not part of the official IEP document.

### **A. General Demographic Components for All IEPs**

All IEPs shall include the date of the IEP meeting and the following general demographic components: the student's name as it appears in school records, native language, birth date, and identification number (for State reporting or Medicaid purposes only), names of parents, address, phone number, school, and grade.

### **B. Documentation of Participants**

The district shall ensure the attendance and participation of the IEP team members' roles at the IEP meeting. Documentation of attendance can be accomplished by listing team members roles on the IEP and checking their attendance status. Prior to the beginning of the meeting, an excusal form, with the parent/adult student's signature of approval, shall be attached identifying any required district members not present at the IEP team meeting.

The attendance list is not a reflection of agreement or disagreement with the IEP; it is only an indication of attendance. As with any team member role, the parent's/adult student's ~~name~~



inclusion on the list does not indicate agreement or disagreement with the IEP contents. If the ~~parent and/or adult student~~ parent/adult student disagrees with all or part of the IEP, the district should remind the ~~parent and/or adult student~~ parent/adult student that he or she may file a written objection. Any participant at the IEP team meeting may file a minority report if he or she disagrees with a program decision. A minority report shall not prevent the implementation of an IEP team decision.

NOTE: See Section 2J of this chapter for additional information on ~~parent and/or adult student~~ parent/adult student objections.

**C. ~~Present Levels of Performance~~ Present Levels of Academic Achievement and Functional Performance, Goals, and Benchmarks/Objectives**

The IEP identifies present levels of academic achievement and functional performance and measurable goals that enable the IEP team to track the effectiveness of services and to ~~easily~~ report progress toward goals.

1. Statements of present levels of academic achievement, ~~and functional~~ performance in an area of need include:
  - a. How a school-age student's disability affects his or her involvement and progress in the general education curriculum (i.e., the same curriculum used by students without disabilities).
  - b. For preschool students, present levels of academic achievement and functional performance should ~~reference the Idaho Early Learning Standards and~~ describe how the disability affects the student's participation in appropriate activities.
2. Although the content of present levels of academic and functional performance statements are different for each student, ~~each statement shall~~ individual present level of academic and functional performance statements will meet the following requirements:
  - a. the statement shall be written in objective, measurable terms and easy-to-understand non-technical language;
  - b. ~~show a direct relationship with the~~ the other components of the IEP, including special education services, annual goals, and, if applicable, benchmarks/objectives for students who participate in Alternate Assessments based on Alternate Achievement Standards the Idaho Standard Achievement Test – Alternate (ISAT-Alt), shall show a direct relationship with the content of present levels academic and functional performance;

- c. the statement shall provide a starting point baseline data for goal development; and
  - d. the statement shall reference general education Idaho Content Standards or Idaho Core Standards or Work Place Competencies-Idaho Employability Skills for Career Ready Practice or Idaho Early Learning Guidelines (eGuidelines), as applicable;
  - e. a statement of the student's strengths and needs; and
  - f. a statement how a school-age student's disability affects his or her involvement and progress in the general education curriculum (i.e., the same curriculum used by students without disabilities).
3. Annual goals shall ~~be related~~ reflect to the needs described in the present levels of academic and functional performance statements. Measurable academic achievement, developmental, and functional annual goals are designed to meet the student's needs that result from the student's disability, to enable the student to be involved in and make progress in the general education curriculum, and to meet each of the student's other educational needs that result from the student's disability.
- a. A goal is a written, measurable statement, developed from the baseline data, that describes describing what a student is reasonably expected to accomplish within the time period covered by the IEP, generally one year.
  - b. Goals are written to enable the student to be involved in and make progress in the general education curriculum and to meet other educational needs that result from the disability.
  - c. A goal shall include the behavior, the performance criteria, and the evaluation procedure.
4. For students taking Alternate Assessments based on Alternate Achievement Standards the ISAT-Alt aligned to the alternate standards, each goal shall have ~~at least two benchmarks/objectives. Benchmarks/objectives shall include a statement of how far the student is expected to progress toward the annual goal and by what date a~~ description of benchmarks or short-term objectives. The district has the discretion to use benchmarks/objectives as described in this paragraph for all students eligible for IEP services.

#### **D. Progress Toward Goals**

The IEP shall include a statement describing:

1. How the student's progress toward IEP goals will be measured and the progress monitoring schedule;
2. How and when the ~~parent and/or adult student~~ parent/adult student will be informed of the student's progress toward the annual goals, including the extent to which progress is sufficient to enable the student to achieve the goals by the end of the IEP time period.

Periodic written progress statements related to progress toward annual goals, will be reported, at minimum, concurrent with the issuance of report cards ~~shall be provided.~~

### **E. Statements of Special Education and Related Services**

Each student's IEP shall describe the specific special education and related services, based on peer-reviewed research to the extent practicable, which will be provided to or on behalf of the student. Special education includes specially designed instruction to meet the unique needs of the student.

The term "related services" refers to transportation and such developmental, corrective, and other supportive services required to assist a student with a disability to benefit from special education as described in the IEP. These services include, but are not limited to:

- audiology
- speech therapy
- language therapy
- psychological services
- physical therapy
- occupational therapy
- therapeutic recreation
- early identification and assessment of students' disabilities
- rehabilitation counseling services
- orientation and mobility services
- medical services for diagnostic or evaluative purposes
- school nurse services
- social work services in school
- supports for school staff
- parent counseling and training. Parent counseling and training includes helping a parent (a) understand child development and the special needs of his or her child and (b) acquire skills to support the implementation of his or her child's IEP.
- interpreter services

NOTE: The Idaho Educational Interpreter Act (Title 33, Chapter 13) was implemented on July 1, 2009, this statute establishes standards for all ~~education~~ educational interpreters in

the State of Idaho. The complete statute can be found at  
<http://www3.state.id.us/idstat/TOC/33013KTOC.html>

This list of related services is not exhaustive and may include other developmental, corrective, or supportive services, transition services or assistive technology. Although services may be of benefit to a student with a disability, all of the services listed above may not be required for each individual student. Related services are the responsibility of the district only if the IEP team determines they are required to assist the student to benefit from special education. Further, the student is not entitled to related services if (a) he or she is not eligible for special education or (b) ~~the parent and/or adult student~~ parent/adult student does not consent to initial provision of special education services.

**EXCEPTION:** The term does not include a medical device that is surgically implanted or the replacement of such device, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device. The district is responsible to appropriately monitor and check devices to make sure the devices are functioning properly. This responsibility applies to devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school.

**THIRD PARTY PAYERS:** Consent from the parents ~~and/or~~ adult student is required when the district bills Medicaid or the parent's insurance for services provided. See Chapter 11 for details.

## **F. Supplementary Aids, Services, and Other IEP Considerations**

Supplementary aids and services may include general education curriculum accommodations and/or adaptations, support for school staff, positive behavioral intervention plans, extended school year services, transportation, transition services, assistive technology services, and travel training services deemed appropriate by the IEP team shall be provided whether or not the district currently has these services in place.

The description of services in the IEP shall:

1. Identify the program accommodations and supplementary aids to be provided to the student in the areas of need.
2. List the specific services that will meet the unique needs of the student, allowing him or her to advance appropriately toward attaining the annual goals, and:
  - a. be involved in and make progress in the general education curriculum;
  - b. participate in extracurricular and other nonacademic activities; and

- c. be educated and participate with other students with disabilities and with students without disabilities to the maximum extent appropriate.

NOTE: The public agency shall ensure that each student with a disability has the supplementary aids and services determined by the student's IEP team to be appropriate and necessary for the student to participate in nonacademic settings.

- 3. State the projected starting date and expected duration of the services, and accommodations/adaptations.
- 4. List the anticipated time per session and frequency of sessions per week or month. The amount of service may not be stated as a range.
- 5. State the location where services and accommodations/adaptations will be provided (such as a general education classroom, resource room, etc.) Note: Location does not mean specific site.

Based on the unique needs of each student, the IEP team should consider any of the following services that may be appropriate for the student and should document such services on the IEP accordingly:

1. **Supplementary Aids and Services**

“Supplementary aids and services” means aids, services, and other supports that are provided in general education classes or other education-related settings and in extracurricular and nonacademic settings to enable students with disabilities to be educated with students without disabilities to the maximum extent appropriate in accordance with LRE requirements.

The determination of which supplementary aids and services are appropriate for a particular student shall be made on an individual basis. Supplementary aids and services may include the following: assistance of an itinerant special education teacher, related service provider, or paraprofessional; support or training for the general educator; use of resource services; provision of note takers; supports for extracurricular or other nonacademic activities; and supports for participation in statewide or district wide achievement testing.

2. **Accommodations and Adaptations**

NOTE: “Modifications” include accommodations and adaptations. Idaho uses the terms accommodations and adaptations to describe two separate instructional and assessment practices.

Accommodations and adaptations include any changes that allow students with disabilities the same opportunity as students without disabilities to participate in and benefit from the educational program, activities, and services of the district.

Accommodations are intended to make educational opportunities more accessible. This may involve the setting, communication modality, equipment, and/or supplemental aids and services. Examples include Braille editions, large print, pencil grips, tape recorders, note takers, and computers with spell check.

Accommodations are changes in the curriculum, instruction, or testing format or procedures that enable students with disabilities to participate in a way that allows them to demonstrate their abilities rather than disabilities. Accommodations are generally considered to include assistive technology as well as changes in presentation, response, timing, scheduling, and settings that do not fundamentally alter the requirements. Accommodations do not invalidate assessment results and do not fundamentally alter the requirements (or course expectations).

Adaptations are changes in educational expectations for the student with a disability compared to peers without disabilities. These adaptations include actual changes in the general education curriculum and instruction or the use of an alternative or supplemental curriculum. Adaptations include strategies such as reading the reading portion of a test, using spell/grammar check for language arts assessments, and substituting out-of-level testing. Adaptations fundamentally alter requirements and invalidate assessment results and provide non-comparable results. Examples include fewer concepts to be mastered, different test questions, and material at a different reading level.

Whenever the IEP team determines that accommodations and/or adaptations are needed to ensure academic progress, these shall be indicated in the IEP. Any accommodations and/or adaptations required in physical education, vocational education, and statewide or district wide assessments shall be included in the IEP.

### 3. Assistive Technology Devices and/or Services

The district shall ensure that assistive technology devices and/or services are made available to a student, if required, as special education, related services, or supplementary aids and services. The following points are definitions and clarifications of terms:

- a. “Assistive technology device” means any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a student with a disability. The term does not include a device that is surgically implanted or the replacement of such device.

The district shall permit the student to use school-purchased assistive technology devices at home and in other settings if the IEP team determines that the student needs access to these devices in non-school settings to receive FAPE. An example of this would be to complete homework. The district may hold a ~~parent and/or adult student~~ parent/adult student liable for the replacement or repair of an assistive technology device that is purchased or otherwise procured by the district if it is lost, stolen, or damaged because of negligence or misuse at home or in another setting outside of school time.

Assistive technology devices should be designed using “universal design” principles. The term “universal design” means a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities. This includes products and services that are directly accessible (without requiring assistive technologies) and products and services that are interoperable with assistive technologies.

- b. “Assistive technology service” means any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device. The term includes the following:
  - 1) an evaluation of the student’s assistive technology needs, including a functional assessment in the student’s customary environment;
  - 2) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices;
  - 3) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
  - 4) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
  - 5) training or technical assistance for a student with a disability or, if appropriate, that student’s family; and
  - 6) training or technical assistance for professionals, including individuals providing education or rehabilitation services, employers, or other individuals who provide services or are otherwise substantially involved in the major life functions of a student with a disability.

- c. The district shall ensure that the hearing aids worn by deaf or hard-of-hearing students in school are functioning properly.
- d. The district is responsible to appropriately monitor and check surgically implanted devices to make sure the devices are functioning properly, if the team has determined that those services are necessary. This responsibility applies to devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school.

**4. Extended School Year Services**

The district shall provide extended school year (ESY) services for students with disabilities who qualify for such services. The ESY programs for eligible students shall meet the requirements of FAPE. The student's educational program is based on individual needs and is not determined by what programs are readily available within the district. The student cannot be required to fail, or to go for an entire school year without ESY services, simply to prove a need. The IEP team shall consider the following in the development and provision of an ESY program:

- a. The term "extended school year services" means special education and/or related services that are provided beyond the regular school year:
  - 1) to a student with a disability;
  - 2) in accordance with the student's IEP; and
  - 3) at no cost to the ~~parent and/or adult student~~ parent/adult student.

The goal of ESY services is to assist students with disabilities with the emergence and maintenance of specific IEP goals addressed during the school year preceding the ESY. These may include goals related to independence, behavior, socialization, communication, and academics. The ESY services for special education students provide a different focus from general summer school programs.

- b. The ESY services shall be considered in light of the totality of the circumstances, including the following:
  - 1) Emerging skill: Few, if any, gains are made during the regular school year. A skill is in the process of emerging, and the IEP team believes that with ESY services the student would make reasonable gains; or



- 2) Regression-Recoupment: The student would regress to such an extent and the amount of time required to relearn a skill or behavior becomes so significant that the student would be unable to benefit from his or her special education; or
  - 3) Self-Sufficiency: An interruption in services would threaten the acquisition of critical life skills that aid in the student's ability to function as independently as possible, thereby continuing the student's reliance on caretakers, including institutionalized care. Critical life skills relate to those skills that lead to independent functioning. Development of these skills can lead to reduced dependency on future caretakers and enhance the student's integration with individuals without disabilities. Skills may include such things as toileting, feeding, mobility, communication, dressing, self-help, and social/emotional functioning.
- c. Decisions concerning ESY services shall be based on collected data and written documentation. Types of data and information may include, but are not limited to, the following:
- 1) Criterion-referenced test data: Consider daily/weekly probes or pre-test/post-test data.
  - 2) Norm-referenced test data: Consider pre-test/post-test data.
  - 3) Anecdotal records: Consider information collected throughout the school year.
  - 4) Physical, mental, or emotional health factors: Consider the educational, medical, and psychological records of the student as well as the prognosis or judgments of educators, medical personnel, parents, and others that work with the student. Consider degenerative types of difficulties that may become intensified during breaks in educational programming.
  - 5) History: Consider evidence of past regression or past ESY services. The IEP team should not automatically assume that a student who has received ESY services in the past will be eligible for ESY services in the future, but it is a factor to consider.
  - 6) Data on observed performance: Consider data maintained on the student concerning performance observed in the classroom, during community-based activities, and as part of IEP progress monitoring.

- 7) Teacher interviews and recommendations: Consider progress reports by teachers, therapists, and others who have direct contact with the student before and after breaks in educational programming.
  - 8) ~~Parent and/or Adult Student~~ Parent/Adult student input: Consider parent observations of the student as well as ~~parent and/or adult student~~ parent/adult student requests for ESY services.
- d. The ESY services shall be clearly delineated in an IEP. The district can meet this requirement by amending the current IEP using an amendment form or by developing a complete ESY IEP. See Section 1C of this chapter for more information.
  - e. The district may not limit ESY services to particular categories of disability or unilaterally limit the amount or duration of these services.

## 5. Transportation

Transportation is a related service if special arrangements resulting from the student's disability are required to assist a student with a disability to benefit from special education. The student's individual needs concerning his or her education are the main considerations in determining services—this includes transportation services.

The IEP team shall consider how the student's disability affects his or her need for transportation, including determining whether the student's disability prevents the student from using the same transportation provided to students without disabilities, or from getting to school in the same manner as students without disabilities. This includes transporting a preschool-age student to the site at which the district provides special education and related services to the student, if that site is different from the site at which the student receives other preschool or day-care services.

When the IEP team determines that special transportation is required and documents it on the IEP, all procedural safeguards under the IDEA 2004 shall be afforded to the student in matters concerning transportation.

Transportation needs may include, but are not limited to, the following:

- a. travel to and from school and between schools to access special education;
- b. travel in and around school buildings;
- c. specialized equipment including lifts and ramps, if required to provide special transportation; or

- d. other services that support the student's use of transportation, such as:
  - 1) special assistance (e.g., an aide on the bus and assistance getting on and off the bus);
  - 2) safety restraints, wheelchair restraints, and child safety seats;
  - 3) accommodations (e.g., preferential seating, a positive behavioral support plan for the student on the bus, and altering the bus route);
  - 4) training for the bus driver regarding the student's disability or special health-related needs. or
  - 5) attending non-academic and extracurricular activities if required by the IEP.

**6. Special Considerations**

As appropriate, the IEP team shall also consider and include in the IEP the following:

- a. If the student's behavior impedes his or her learning or that of others, the IEP team shall consider the use of positive behavioral interventions, supports and other strategies to address that behavior.
- b. If the student has limited English proficiency, the IEP team shall consider the language needs of the student. Cognitive academic language proficiency (CALP) shall be determined by administering appropriate language dominance tests.
- c. If the student is blind or visually impaired, the IEP team shall provide for instruction in Braille and the use of Braille unless the IEP team determines that Braille is not appropriate for the student. This determination can only be made after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use of Braille).
- d. The IEP team shall consider the communication needs of the student. In the case of the student who is deaf or hearing impaired, the IEP team shall consider the language needs of the student, opportunities for direct communication with peers and professional personnel in the student's language and communication mode, the student's academic level, and his or her full range of needs including opportunities for direct instruction in the student's language and communication mode.

## G. Statewide and Districtwide Achievement Testing

Students with disabilities are to be included in all statewide and district wide assessments. Participation rates and performance data, both aggregate and disaggregate, for students with disabilities are reported to the public annually.

The IEP team shall determine how the student will participate in statewide and district wide assessments—without accommodations, with accommodations, with adaptations, or by means of the alternate assessment. The IEP team determines what accommodations and/or adaptations to use based on those that are used regularly by the student during instruction or classroom testing and on what is listed in the accommodations section of the IEP.

The IEP team shall determine whether the student meets the state criteria for the alternate assessment. It should be noted that some students might participate in parts of the regular assessment and parts of the alternate assessment. For example, a student may participate with accommodations in the *regular* reading portion of the statewide assessment and may participate in the math portion of the statewide assessment using the *alternate* assessment.

The following guidelines shall be used to determine how the student will participate in statewide and district wide assessments:

### 1. Regular Assessment without Accommodations

The IEP team determines and documents in the IEP that a student with a disability can adequately demonstrate his or her knowledge, abilities, or skills on statewide and district wide assessments without accommodations.

### 2. Regular Assessment with Accommodations

Appropriate accommodations for students with disabilities shall be based on the individual needs of each student. Accommodation decisions are made by the IEP team and shall be recorded in the IEP. Accommodations should facilitate an accurate demonstration of academic achievement, developmental, and functional performance on State and district-wide assessments. They should not provide the student with an unfair advantage or change the underlying skills that are being measured by the test. Accommodations shall be the same or nearly the same as those used by the student in completing classroom assignments and assessment activities. The accommodations shall be necessary for enabling the student to demonstrate knowledge, ability, skill, or mastery. Accommodations *do not* invalidate test results.

### 3. Regular Assessments with Adaptations

A student may be unable to demonstrate what he or she knows or is able to do without using an adaptation. However, an adaptation inherently circumvents the underlying skills that the test is measuring; therefore, an adaptation *always* invalidates the assessment result. If an adaptation is included in the IEP for statewide and/or district wide assessments, it shall be one that the student uses in completing classroom assignments and assessment activities on a regular basis. Further, the use of an adaptation in statewide and district wide assessments shall be clearly coded on the student's score sheet.

The IEP team has the authority to make the decision that a student needs an adaptation in order to participate in statewide and district wide assessments, even though the adaptation *will* cause the student to score as "not proficient" and to be counted as NOT participating in the assessment under AYP determinations. All IEP team members, including the ~~parent and/or adult student~~ parent/adult student, shall understand (a) the possible consequences that could result from this decision and (b) its effect on diploma options and post school activities involving education, career opportunities, military service, and community participation.

4. ~~Idaho Standard Achievement Test—Alternate (ISAT-Alt)~~  
Alternative Assessments based on Alternate Achievement Standards

If the student cannot participate in some or all of the general assessments, the IEP shall contain a statement that includes the reason the student cannot participate in the general assessment and the alternate assessments—language arts, reading, math or science—in which the student will participate.

a. ~~Students Eligible to Take the ISAT-Alt~~ Alternative Assessments based on Alternate Achievement Standards

The IEP team shall find that the student meets all of the criteria listed below to determine that he or she is eligible to participate in the alternate assessment:

- 1) The student's demonstrated cognitive ability and adaptive behavior prevent completion of the general academic curriculum even with program accommodations and/or adaptations;
- 2) The student's course of study is primarily functional-skill and living-skill oriented (typically not measured by State or district assessments); and

- 3) The student is unable to acquire, maintain, or generalize skills in multiple settings and to demonstrate performance of these skills without intensive and frequent individualized instruction.
- b. Students Not Eligible to Take ~~the ISAT-Alt~~ Alternative Assessments based on Alternate Achievement Standards

Students are *not* to be included in ~~the ISAT-Alt~~ Alternative Assessments based on Alternate Achievement Standards for any of the following reasons:

- 1) The only determining factor is that the student has an IEP;
- 2) The student is academically behind because of excessive absences or lack of instruction; or
- 3) The student is unable to complete the general academic curriculum because of socioeconomic or cultural differences.

#### H. LRE Explanation and Placement Decisions

The IEP shall explain the extent, if any, to which the student will *not* participate in the general education classroom, the general education curriculum, or extracurricular or other nonacademic activities.

In recommending the ~~most~~ appropriate placement in the least restrictive environment (LRE) for the student with a disability, the IEP team shall consider the student's needs and the continuum of services to meet those needs. The ~~parent and/or adult student~~ parent/adult student shall be involved in the placement decision. Removal from the general education environment occurs only when the nature or severity of the disability is such that education in general classes with the use of supplementary aids and services cannot be achieved satisfactorily. A student with a disability is not to be removed from age-appropriate general education classrooms solely because of needed accommodations and adaptations in the general education curriculum. In addition, a student with a disability shall be educated with students without disabilities in the general education classroom to the maximum extent appropriate.

NOTE: The district's reassignment of students (with or without disabilities) to another classroom or building in the district is *not* a change of placement for a student with a disability as long as the IEP goals remain unchanged and the degree of interaction with peers without disabilities remains the same. Examples include, but are not limited to, dividing a class because of overcrowding; moving an entire grade level to a different building; and going to a different school as a result of moving from one grade level to another grade level.

See Chapter 6 for more information on placement in the LRE

## **I. Consent for Initial Provision of Special Education and Related Services**

The district shall make reasonable efforts to obtain informed consent from the ~~parent and/or the adult student~~ parent/adult student before the initial provision of special education and related services to the student.

If the ~~parent and/or adult student~~ parent/adult student communicates in writing, he or she refuses special education and related services following the evaluation and determination of eligibility, the district shall not provide special education and related services to the student. If the ~~parent and/or adult student~~ parent/adult student fails to respond to a district's documented efforts to gain consent for initial provision of special education and related services, the district shall not provide special education and related services to the student. In both cases:

1. The district shall not be in violation of the requirement to provide FAPE to the student or the requirement to provide special education and related services;
2. The district shall not be required to convene an IEP meeting or develop an IEP for the student; and
3. The district shall not use mediation and/or due process in order to obtain consent or a ruling allowing initial placement.

If the ~~parent and/or adult student~~ parent/adult student wishes to move forward with the provision of services stated on the IEP and placement in special education, consent for initial placement in special education shall be obtained after the development of an IEP. Consent means that the ~~parent and/or adult student~~ parent/adult student understands and agrees in writing to the carrying out of the activity for which consent is sought.

## **J. ~~Parent and/or Adult Student~~ Parent/Adult Student Objection to the IEP**

If the ~~parent and/or adult student~~ parent/adult student disagrees with an IEP program or placement change proposed by the district, he or she may file a written objection to all or parts of the proposed change. If the ~~parent and/or adult student~~ parent/adult student files a written objection that is postmarked or hand delivered within ten (10) days of the date he or she receives written notice from the district of the proposed change, the changes to which the ~~parent and/or adult student~~ parent/adult student objects cannot be implemented. If the changes have already been implemented, implementation of those changes shall cease. The district and ~~parent and/or adult student~~ parent/adult student may use methods such as additional IEP team meetings, IEP facilitation, or SDE mediation to resolve the disagreement. If these attempts to resolve the dispute fail, the district may request a due process hearing to obtain a hearing officer's decision regarding the proposed change, unless it is an initial IEP. However, the written objection cannot be used to prevent the district from placing a student in an interim alternative educational setting (IAES) in accordance with the IDEA 2004 procedures for discipline of a student.

If the ~~parent and/or adult student~~ parent/adult student files a written objection to an IEP change or placement change proposed by the district any time *after ten (10) calendar days* of receiving written notice, the student shall ~~“stay put”~~ remain in the placement described in the disputed IEP, and that IEP is implemented as written until the disagreement is resolved unless the ~~parent and/or adult student~~ parent/adult student agree otherwise. ~~However, the written objection cannot be used to prevent the district from placing a student in an interim alternative educational setting (IAES) in accordance with the IDEA 2004 procedures for discipline of a student.~~

See Chapter 11 for information about the prior written notice requirements regarding the provision of FAPE and educational placement.

See Chapter 13 for more information about the various forms of dispute resolution.

### **K. Additional Transition Components for Secondary-Level IEPs**

Secondary transition services are defined as a coordinated set of activities for a student with a disability that are designed within a results-oriented process focused on improving the academic and functional achievement of the student to facilitate movement from school to post school activities including postsecondary education, vocational education, integrated employment (including supported employment), continuing in adult education, adult services, independent living, or community participation. The activities include instruction, community experiences, development of employment and other post school adult-living objectives and, if appropriate, acquisition of daily living skills and a functional vocational evaluation. These activities are based on the individual student’s needs, taking into account the student’s strengths, preferences and interests. The following are required components for all secondary students receiving special education services.

1. Beginning with the IEP to be in effect when a student is sixteen (16) years old (or younger if determined appropriate by the IEP team), the IEP shall include:
  - a. ~~present levels of educational~~ academic and/or functional performance based on an age appropriate transition evaluation;
  - b. appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills;
  - c. transition services ~~(including courses of study)~~, that will reasonably enable needed to assist the student in reaching postsecondary goals identified on the IEP;
  - d. there must also be evidence that the student was invited to the IEP team meeting where transition services are to be discussed; if the student does not



attend the IEP meeting, the IEP team must take other steps to ensure the student's preferences and interests are considered;

- e. if appropriate, a representatives of any participating agency was invited to the IEP team meeting with a prior consent of the parent or student who has reached age of majority.
- f. graduation requirements for the student receiving special education services. Refer to Chapter 7 for more detailed information on documentation of high school graduation in the IEP.

The postsecondary goals and transition services shall be updated on the IEP annually.

- 2. Not later than the student's seventeenth (17<sup>th</sup>) birthday, the IEP shall include a statement that the student and parent has been informed whether or not special education rights will transfer to the student on his or her eighteenth (18<sup>th</sup>) birthday. Special education rights will transfer from the parent to the student when the student turns eighteen (18) years old unless the IEP team determines that:

*(For more information on the transfer of rights see Chapter 11)*

- a. the student is unable to provide informed consent with respect to his or her special education program; or
- b. the parent has obtained legal guardianship.

*(For more information on the transfer of rights see Chapter 11)*

- 3. When a student exits from special education as a result of earning a regular diploma or aging out, the district shall provide the student with a summary of his or her academic achievement and performance along with recommendations concerning how to assist the student in meeting postsecondary goals.

#### **L. Following the Meeting**

Following the IEP team meeting, a copy of the IEP and written notice of proposed or refused actions shall be given to the ~~parent and/or adult student~~ parent/adult student. IEPs and written notice should also be given to the ~~parent and/or adult student~~ parent/adult student whenever a change is made to the IEP or upon request.

Each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for implementing any portion of the IEP shall have access to the IEP and be informed of his or her specific responsibilities. This includes being informed of

any specific accommodations, adaptations, or supports that shall be provided to the student to ensure that the IEP is implemented appropriately.

### **Section 3. IEP Reviews**

#### **A. Annual Reviews**

Each student's IEP shall be reviewed at least annually by the IEP team, once every year (365 days). Meetings may be held any time throughout the school year as long as the IEP is reviewed annually and is in effect at the beginning of each school year. Either at or after the annual review, written notice that the new IEP changes will be implemented shall be provided to the ~~parent and/or adult student~~ parent/adult student.

The IEP review includes the following purposes:

1. to determine whether the student's annual goals have been achieved;
2. to revise the IEP if there is any lack of expected progress toward annual goals and in the general education curriculum, where appropriate;
3. to determine whether any additional assessments are necessary and to address the results of those conducted;
4. to address information about the student provided to, or by, the ~~parent and/or adult student~~ parent/adult student;
5. to address the student's anticipated needs;
6. to monitor the continuing eligibility of the student based on an evaluation or review of a variety of data, which may include formal or informal assessment, progress toward IEP goals and when applicable benchmarks/objectives;
7. to write a new IEP; and
8. to consider a reevaluation to determine if a student is no longer eligible and special education services should be discontinued.

#### **B. IEP Amendments**

In making changes to a student's IEP after the annual IEP meeting for a school year, the ~~parent and/or adult student~~ parent/adult student and the district may agree in writing not to convene an IEP meeting for the purposes of making such changes, and instead may develop a written document to amend the student's current IEP. The ~~parent and/or adult student~~ parent/adult

student will be provided with a revised copy of the IEP with the amendments incorporated. The annual review date remains the date of the original IEP.

If the ~~parent and/or adult student~~ parent/adult student believes that the student is not progressing satisfactorily or that there is a problem with the current IEP, he or she may request an IEP team meeting. The district shall grant any reasonable request for such a meeting. If the district refuses to convene an IEP meeting requested by the ~~parent and/or adult student~~ parent/adult student, the district shall provide written notice to the ~~parent and/or adult student~~ parent/adult student, including an explanation of why the district has determined the meeting is unnecessary.

If any other member of the IEP team feels that the student's placement or IEP services are not appropriate, that team member may request an IEP team meeting.

Each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for implementing any portion of the amended IEP shall have access to the amendment and be informed of his or her specific responsibilities.

#### **Section 4. IEPs for Transfer Students**

##### **A. Transfer from an Idaho School District**

When a student with a disability transfers school districts with a current IEP in Idaho, the district shall provide the student with FAPE. This includes services comparable to those described in the previously held IEP, in consultation with the ~~parent and/or adult student~~ parent/adult student, until such time as the district adopts the previously held IEP or develops, adopts, and implements a new IEP. The receiving district shall ~~promptly request records~~ request the eligibility documents and the most current IEP within two (2) school days from the sending district and once the district has formally received a request for a student's record from another Idaho district, the district shall forward copies or the original documents within 2 school days of the request. Within fourteen (14) calendar days the receiving district will request the full educational record of the transferring student from the former school. If originals are sent, the sending district shall maintain a copy for audit purposes.

Note: An IEP shall be developed and implemented if a new IEP cannot be developed within five (5) school days or if a reevaluation will be taking place.

##### **B. Transfer from an Out-of-State District**

When a student with a disability transfers from out of state to an Idaho school district with a current IEP in that other state, the district shall provide the student with FAPE. This includes services comparable to those described in the previously held IEP, in consultation with the ~~parent and/or adult student~~ parent/adult student, until such time as the district conducts an evaluation, if determined necessary, and develops, adopts, and implements a new IEP.

~~If the district has formally received a request from an out-of-state school, the district shall request copies or the original documents within 10 days of the request. If originals are sent, the district shall maintain a copy for audit purposes.~~

Note: IDAPA requires the new district to request a copy of the eligibility documentation and most current IEP within two (2) school days. Within five (5) school days of receiving this information, the new district determines if a new assessment is required. In the meantime an interim IEP may be implemented if the parent agrees. If there is no agreement, the student is placed in general education. Within fourteen (14) calendar days the receiving district will request the full educational record of the transferring student from the former school.

### **C. Transfer to an Out-of-State District**

Within ten (10) school days of receiving a request from an out of state school district for copies of eligibility documentation and a transferring student's IEP, a district shall send the requested information to the receiving district.

## **Section 5. IEPs for Children from the Infant/Toddler Program**

### **A. Interagency Agreement and Protocols**

The school district, as the local lead agency for Part B, shall initiate the development of a signed interagency protocol with the regional Infant/Toddler Program (ITP) of the Department of Health and Welfare (DHW), the lead agency under Part C of the IDEA 2004. The protocol shall be in accordance with the current state Interagency Agreement for Early Childhood Special Education Services and Early Intervention for Children Ages Two through Five. See Appendix 5B.

The protocol will outline the obligations of each agency to ensure:

1. a smooth and effective transition of children served under Part C to early childhood special education services (ECSE) under Part B,
2. by the child's third birthday, eligibility for Part B services has been determined and an IEP or Individual Family Service Plan (IFSP) has been developed and implemented, and
3. each district and agency shall participate in transition planning conferences.

NOTE: A child, who turns three (3) after May 1, has been determined eligible for Part B services, and parental consent has been obtained for initial placement for Part B services, can be served as outlined in the IFSP by the ITP until school starts in the fall. This is the case unless specified differently in the local interagency protocol.

## **B. Part C to Part B Transition Planning**

In the case of a child who may be eligible for ECSE services, the district shall participate in a transition planning conference with the family arranged by the ITP. The conference will be conducted at least ninety (90) calendar days (and up to nine (9) months at the discretion of all parties) before the child's third birthday to discuss eligibility requirements under Part B of the IDEA 2004, needs and concerns of the child and family, and any services the child may receive.

For a complete and detailed description of all required transition activities, documentation and timelines, refer to Appendix 5B.

The ITP has the responsibility to:

1. notify the school district and SDE of potentially eligible children,
2. invite and coordinate a transition planning meeting to review the process to determine eligibility and assess service options available,
3. establish a plan for facilitating the transition of the toddler with a disability to early childhood special education services,
4. provide the district with a copy of the Child Outcome Summary Form (COSF) completed at exit, and
5. upon invitation, attend the initial IEP meeting.

The school district has the responsibility to:

1. make contact with the family and provide notice of procedural safeguards and written information about the Part B and early childhood special education services. This information may be provide in person, at a transition conference, or by mail.
2. attend and participate in the transition planning meeting,
3. determine eligibility and develop an IEP or IFSP prior to child's third birthday,
4. consider the Part C COSF exit outcome data for to help determine Part B early childhood entry outcome data,
5. invite ITP representatives, at the request of the parent, to the initial IEP meeting, and
6. obtain consent for initial provision of special education and related services under Part B.

### **C. IEP or IFSP Required**

1. By the child's third (3<sup>rd</sup>) birthday, the district shall have an IEP or IFSP in place for each student three (3) through five (5) years old who is eligible for ECSE services.
2. In developing the IEP, the IEP team shall consider the content of the IFSP including:
  - a. the ~~natural environments~~ least restrictive environment statement, and
  - b. the educational component that promotes school readiness, pre-literacy, language and numeracy skills
3. The IFSP may serve as the IEP of the child, if:
  - a. agreed by the district and the child's parents,
  - b. a detailed explanation of the differences between the IFSP and the IEP is provided to the parents (See Appendix 5B),
  - c. parental written informed consent is obtained, and
  - d. developed according to the IEP procedures outlined in Section 2 of this chapter. If the district elects to use an IFSP, the district is required to implement only the educational components of the IFSP.

### **D. Consent and Notice Requirements**

1. Notice Announcing Initial IEP Team Meeting: The district shall inform the parents of their rights to request the participation of ITP representatives at the initial IEP team meeting for children previously served by Part C.
2. Release of Information: The district shall obtain written parental consent for the release of information to obtain pertinent student records from non-educational agencies such as ITP, developmental disabilities agencies, medical providers, day-care centers, and Head Start.
3. Assessments: At the transition planning conference, if further assessments are necessary to determine eligibility, the student's present levels of academic and functional performance, and goals or services on the IEP, informed consent to evaluate is required. (Parental consent for assessment under Part B is required even though the parent may have given consent earlier under Part C). Otherwise, only written notice to inform the parent of the district's decision to use the current evaluation data, and not to conduct any further assessments, shall be provided to the

parent. The parent shall also be informed of his or her right to request additional assessments.

4. Consent for Initial Provision of Special Education and Related Services: Parental consent for the initial provision of special education and related services and written notice for the implementation of the IEP or IFSP under Part B is required. Eligibility, initial provision of services, and LRE placement shall be documented for Part B services.

**~~E. Child's Status During Due Process Hearing Proceedings~~**

~~If an educational placement dispute arises involving a child transitioning from Part C to Part B, the child cannot remain in Part C services when he or she is over the age of three. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services, then the school district shall provide those special education and related services that are not in dispute between the parent and district until completion of all the hearing proceedings. If the parent does not give written consent for the special education or related services, the student will not receive services until completion of the hearing proceedings.~~

**Section 6. Students with Disabilities in Adult Prisons**

The following requirements apply for students with disabilities ages eighteen (18) to the semester when they turn twenty-one (21) who are convicted as adults under Idaho law and incarcerated in adult prisons:

1. A student identified as a student with a disability, who is eligible for special education, and who is convicted as an adult and incarcerated in an adult prison, is not subject to child find, but if already identified is entitled to FAPE until age twenty-one (21).
2. The student will not participate in statewide assessments.
3. Transition planning and services do not apply if the student will remain in prison beyond the semester of his or her twenty-first (21<sup>st</sup>) birthday.

The IEP team may revise the student's IEP and placement, regardless of the LRE requirements, if the state has demonstrated a bona fide security or other compelling penological interest that cannot be otherwise accommodated.

**Chapter 6**

**LEAST RESTRICTIVE ENVIRONMENT**

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## Chapter 6 Least Restrictive Environment

The Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) states that, to the maximum extent appropriate, all students with disabilities, three to twenty-one (3-21) years of age, are to be educated with age appropriate peers who are nondisabled, both with and without disabilities. This is known as the least restrictive environment (LRE). The LRE is the appropriate balance of settings and services to meet the student's individual needs. The district shall have an array of services and a continuum of educational setting options available to meet the individual LRE needs of each student.

An appropriate LRE is one that enables the student to make reasonable gains toward goals identified in an individualized education program (IEP) while being educated with peers who are nondisabled to the maximum extent appropriate as determined by the IEP team on a case by case basis. The student's IEP shall indicate the LRE for the student and explain to what extent, if any, the student will or will not participate in the general education classroom environment, the general education curriculum, and extracurricular or other nonacademic activities. This provision includes students with disabilities placed in public or private institutions or other care facilities.

Special classes, separate schooling, and other removals of a student with a disability from the general education environment may occur only when the nature or severity of the disability is such that education in the general education class, even with the use of supplementary aids and services, cannot be achieved satisfactorily.

### Section 1. Least Restrictive Environment Considerations

#### A. When to Make and Review Placement Decisions

1. Placement decisions for a student with a disability are made following the determination of the individual needs, goals, and required services.
2. Placement decisions are revisited at least annually by the IEP team, which includes the ~~parent and/or adult student~~ parent/adult student and other persons knowledgeable about the student, the meaning of the evaluation data, and the placement options available ~~in the district.~~
3. Placement decisions are reconsidered, as appropriate, when an IEP team is convened to review a student's academic, functional, or developmental progress.

#### B. Considerations in Placement Decisions

LRE decisions are made individually for each student. The IEP team shall consider the following when determining the LRE in which the IEP can be implemented:

1. IEP Goals and Services: The student's IEP goals and services are ~~is-developed~~ prior to the determination of the ~~location of~~ services and settings. The services and settings needed by each student with a disability must be based on the student's ~~IEP and~~ unique needs that result from his or her disability, not on the student's category of disability.
2. Age Appropriate Peers: Students with disabilities shall be educated with age-appropriate peers to the maximum extent appropriate. A student with a disability is not removed from age-appropriate general education environments solely because of needed accommodations and/or adaptations in the general education curriculum.
3. School of Attendance: A student with a disability shall be educated in the school as close as possible to the student's home and unless the IEP requires some other arrangement, the student is educated in the school he or she would attend if not disabled.
4. Harmful Effects: Consideration shall be given to any potential ~~current or long term~~ harmful effect on the student or on the quality of services the student needs, ~~including the student's ability to graduate and achieve their post high school goals.~~
5. Accommodations and/or Adaptations: A student with a disability is not removed from general education settings solely because of needed accommodations and/or adaptations in the general education curriculum.
6. Participation in Nonacademic and Extracurricular Services and Activities:
  - a. A student with a disability shall be allowed to participate with students without disabilities in nonacademic and extracurricular services and activities to the maximum extent appropriate. These services and activities may include meals, recess, field trips, counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the district, referrals to community agencies, career development, and assistance in making outside employment available.
  - b. The IEP team determines the supplementary aids and services that are appropriate and necessary for the student to participate in nonacademic settings and extracurricular services and activities.

### **C. Documentation of Placement Decisions**

If the student will not participate *entirely* in the general education classroom, curriculum, and/or nonacademic and extracurricular activities, the IEP shall include a written explanation justifying the IEP team's decisions including the consideration of supplementary aids and services. The district shall provide the parent/adult student with prior written notice whenever the IEP team proposes to change or refuses to change the educational placement of the student.

## Section 2. District Responsibility for Continuum of Settings and Services

The continuum of settings includes instruction in general classes, special classes, special schools, home instruction and instruction in hospitals and institutions. In addition, the continuum makes provision for supplemental services, such as resource services or itinerant instruction, to be provided in conjunction with the general classroom. In determining appropriate settings and services for a student with a disability, the IEP team shall consider the student's needs and the continuum of alternate placements and related services available to meet those needs. Regardless of placement, the student shall be given appropriate access to the general education curriculum, as determined by the IEP team. The district shall be able to justify the available continuum of services and placement decisions for individual students.

All LRE considerations also apply to preschool students ages three (3) to five (5) years with disabilities who are entitled to receive a free appropriate public education (FAPE). Settings for implementing IEPs for students of legal kindergarten-age are the same as for all other school-age students. Settings for implementing IEPs for preschool-age students may include public or private early childhood programs. Public schools that do not operate early childhood programs for preschool students without disabilities are not required to initiate such programs solely to satisfy LRE requirements. IEP teams in Public public schools that do not have an inclusive public preschool that can provide all the appropriate services and supports to meet the individual needs of preschool students with disabilities, shall explore alternative methods to ensure LRE requirements are met for preschool students ages three (3) to five (5) years, which may include:

1. providing opportunities for participation (even part-time) of preschool students with disabilities in public or private regular early childhood programs operated for preschool students without disabilities by other agencies, such as Head Start;
2. placing preschool students with disabilities in the following:
  - a. private early childhood programs for preschool students *without* disabilities; or,
  - b. private early childhood programs or other community-based early childhood settings that integrate students *with and without* disabilities; and,
3. locating classes for preschool students with disabilities in elementary schools.

See Chapter 11 for information regarding prior written notice requirements that apply to proposed or refused changes in educational placement.

## Section 3. Federal Reporting of LRE

**STATE DEPARTMENT OF EDUCATION  
DECEMBER 18, 2014**

The IEP includes a section for reporting the educational environments required for the Federal ~~December 1~~ Child Count (annual report of children served collected on any date between October 1 and December 1 of each year). This section is for reporting the amount of time the student spends in the general education environment, with or without special education and related services. After determining the LRE and the educational environments in which the student will receive their general education instruction and special education services, the IEP team will document the educational environment for federal reporting.

**STATE DEPARTMENT OF EDUCATION  
DECEMBER 18, 2014**

Idaho Special Education Manual Chapter 7: Discontinuation of Services, Graduation & Grading

**Chapter 7**

**DISCONTINUATION OF SERVICES, GRADUATION, AND GRADING**

**Chapter Contents**

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**Chapter 7****Discontinuation of Services, Graduation, and Grading****Section 1. Discontinuation of Services****A. Students Who Are No Longer Entitled to Services**

The district will follow appropriate procedures to discontinue special education services to students who are no longer entitled to those services.

**1. Student No Longer Meets Eligibility Criteria**

If it is suspected that a student no longer meets the eligibility criteria for the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004), the evaluation team will conduct a reevaluation and arrange to have additional assessments conducted if necessary. If the student is no longer eligible under the Idaho eligibility standards, the district will provide the ~~parent and adult student~~ parent/adult student with written notice of this decision prior to discontinuing special education services.

**2. Student Completes Requirements for a High School Diploma**

The district's obligation to provide special education services ends when the student meets the district and State requirements that apply to all students for receipt of a regular high school diploma without adaptations. Although this is considered a change of placement, a reevaluation is not required. Prior to graduation and the discontinuation of special education services the district shall:

- a. provide the ~~parent and/or adult student~~ parent/adult student with written notice of the district's obligation to provide special education services ends when the student obtains a regular high school diploma; and
- b. provide the ~~parent and/or adult student~~ parent/adult student with a written summary of academic achievement and functional performance which shall include recommendations to assist the student in meeting his or her postsecondary goals. This summary is known as the Summary of Performance (SOP).

**3. Student Reaches Maximum Age**

For students who have not yet met their district's high school graduation requirements ~~graduated from high school by meeting requirements without adaptations to regular graduation requirements~~, the district's obligation to provide special education services



ends at the completion of the semester in which the student turns twenty-one (21) years of age. This is considered a change of placement that does not require a reevaluation. If a student is turning twenty-one (21), the district shall:

- a. provide the ~~parent and/or adult student~~ parent/adult student with written notice the district's obligation to provide special education services ends at the completion of the semester in which the student turns twenty-one (21) years of age; and,
- b. provide the ~~parent and/or adult student~~ parent/adult student written summary of academic achievement and functional performance which shall include recommendations to assist the student in meeting his or her postsecondary goals. This summary is known as the Summary of Performance (SOP).

## **B. Change in District Obligation to Provide Services**

Under certain circumstances, a student may continue to be eligible for special education services, but the district's obligation to provide services changes.

### **1. Transfer to Another District**

When a student ~~is no longer a legal resident of~~ ~~moves out of~~ the district, the district will forward the student's special education records electronically or by mail within ten (10) calendar days of the request from the new district. The records shall include, at least, the student's most recent individualized education program (IEP) and eligibility documentation. The sending district will retain copies or originals of the most recent six (56) years of programmatic and fiscal records, including IEPs and eligibility documentation. During an audit, Child Count verification, or monitoring, this documentation may be needed to demonstrate that the student was eligible for special education and received special education services from the district.

### **2. Enrollment in Private School or Receives Homeschooling**

When a ~~parent and/or adult student~~ parent/adult student withdraws a student from public school and enrolls him or her in a private school or provides homeschooling, the district's responsibilities vary depending on the circumstances. See Chapters 2 and 9 for more information.

### **3. Dropouts**

When a student drops out of school, written notice will be sent to the ~~parent and/or adult student~~ parent/adult student and a copy of the notice will be placed in the student's special education confidential file. If the student reenrolls and is still eligible for special education, the previous IEP can be implemented if it is current and appropriate. A new IEP shall be developed if needed.

### C. ~~Parent and/or Adult Student~~ Parent/Adult Student Revokes Consent for Special Education Services

When a ~~parent and/or adult student~~ parent/adult student revokes consent for special education services in writing, prior written notice shall be provided specifying when the special education and related services will cease. Note: A parent/adult student has the right to revoke consent for IEP services in their entirety, not service by service. Written notice shall be sent to the parent and/or adult student following the determination of whether or not the student is still eligible to receive special education services. The written notice shall include a statement indicating the district stands ready, willing, and able to provide FAPE should the student remain eligible for special education services.

## Section 2. Graduation

Graduation means meeting district and State requirements for receipt of a high school diploma. If a student is not granted a regular high school diploma or if the high school diploma is granted based on completion of adapted graduation requirements, the student is entitled to receive a free appropriate public education (FAPE) through the semester in which he or she turns twenty-one (21) years of age or determined no longer eligible as a result of a reevaluation. A General Education Development (GED) certificate does not meet district requirements that are comparable to a regular high school diploma. The IEP team making these decisions shall include a district representative knowledgeable about State and local graduation requirements.

### A. Individualized Education Program (IEP) Team Requirements regarding Graduation:

1. D determine whether the student will meet all state and local requirements to be eligible to graduate from high school and anticipated graduation date-;
2. D develop the course of study in collaboration with the Parent Approved Student Learning Plan required for every student prior to the end of eighth (8<sup>th</sup>) grade. The Student Learning Plan will be reviewed annually and may be revised at any time;
3. B beginning no later than the end of the student's ninth (9<sup>th</sup>) grade, the IEP team shall review annually the student's course of study. The IEP team shall identify and make changes to the course of study needed for the student to meet graduation requirements and become a contributing member of society;
4. ~~The IEP team shall~~ document any accommodations and adaptations made to the district's and State's regular graduation requirements on the student's behalf.

#### a. Graduation Requirements with Accommodations

**STATE DEPARTMENT OF EDUCATION  
DECEMBER 18, 2014**

Idaho Special Education Manual Chapter 7: Discontinuation of Services, Graduation & Grading

Accommodations to graduation requirements are determined by the IEP team and are deemed necessary for the student to complete graduation requirements. Further:

- 1) Accommodations to graduation requirements must specifically address completion of the student's secondary program.
- 2) Accommodations will maintain the same level of rigor to the district and State graduation requirements. For example, a teacher may use different instructional strategies or alternate methods for assessing the student's acquisition of skills that are equally rigorous.
- 3) Accommodations made to any district or State graduation requirement shall be stated in the student's IEP.

b. Graduation Requirements with Adaptations

Long-term consequences for the student shall be considered when adaptations are made to graduation requirements. Further:

- 1) Adaptations to graduation requirements shall specifically address completion of the student's secondary program.
- 2) Adaptations may alter the level of rigor required in the district or State graduation requirements. Examples of adaptations include changes made to course content, objectives, or grading standard that alter the level of rigor.
- 3) Adaptations of any district or State graduation requirement shall be stated on the student's IEP. The team shall ~~should~~ discuss with the parents the effect of adaptations on regular education diploma and FAPE.

5. Demonstration of Proficiency of State Content Standards State Board of Education rule (IDAPA 08.02.03.105-03 06) requires ~~a demonstration of proficiency regarding the 10th Grade Idaho Content Standards as a condition of graduation that each student achieve a proficient or advanced score on the Grade 10 Idaho Standards Achievement Test (ISAT) in math reading and language usage in order to graduate. Each student's IEP receiving special education services will include as part of his or her IEP a statement of how the student will demonstrate proficiency in on the Idaho Content Standards Grade 10 Idaho Standards Achievement Test as a condition of graduation. If the method to demonstrate proficiency is different than meeting proficient or advanced scores on the high school ISAT or the ISAT-Alt, a student with an IEP may meet this requirement by:~~

- a. achieving the proficient or advanced score on the Idaho Standard Achievement Test (ISAT) or, for eligible students, on the Idaho Standard Achievement Test – Alternate (ISAT-Alt); or

- b. ~~using the local alternate route established by the local school board as an alternate method of demonstrating proficiency on the content standards through some other locally established plan; or~~
- c. ~~completing having an IEP that outlines alternate graduation requirements for graduation or documents assessment adaptations (adaptations that will invalidate the assessment score). outlined in the IEP.~~

## **B. Graduation Ceremonies**

A special education student who completes his or her secondary program through meeting graduation requirements or criteria established on his or her IEP will be afforded the same opportunity to participate in graduation ceremonies, senior class trips, etc., as students without disabilities. It should be noted the participation in his or her graduation ceremony does not, in and of itself, equate to the receipt of a regular high school diploma or completion of their secondary program.

## **Section 3. Transcripts and Diplomas**

### **A. Transcript**

The transcript serves as a record of individual accomplishments, achievements, and courses completed. Transcripts shall adhere to the following conditions:

1. Accommodations that allow the student to complete and demonstrate that he or she has met graduation requirements will not be noted on the transcript.
2. Adapted course work may be noted on the transcript if the ~~parent and/or adult student~~ parent/adult student is informed in advance and the designation is not discriminatory or identify the student as having a disability or receiving special education.
3. Course designations, titles, or symbols that are used solely to identify adapted course work that is taken by students with disabilities will not be used.

### **B. Diploma**

1. For students who are eligible for special education services, the district will ~~issue a use a regular high school~~ diploma at the completion of their secondary program through meeting graduation requirements or criteria established on his or her IEP; this includes students who meet the graduation requirements with accommodations and/or adaptations.

2. A modified or differentiated diploma or certificate may not be used for students who are eligible for special education unless the same diploma or certificate is granted to students without disabilities in the same graduating class.

#### **Section 4. Grades, Class Ranking, and Honor Roll**

Grades earned by students with disabilities will not be categorically disregarded or excluded from district wide grade point average (GPA) standing. The district may establish objective criteria for class rankings, honors, etc., that weight courses according to degree of difficulty or exclude non-core courses so long as such practices are nondiscriminatory. ~~The district may use contracts with a student to establish grading criteria.~~

**Chapter 8**

**CHARTER SCHOOLS**

**Chapter Contents**

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## **Chapter 8 Charter Schools**

Federal law requires that students with disabilities be offered educational choices comparable to those offered to students without disabilities. One of these choices is the opportunity to attend a public charter school. Each public charter school, whether a charter school within a district (~~LEA~~) or a charter school LEA (Local Education Agency), shares in the obligation to accept and appropriately serve students with disabilities under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA2004) in the same manner as any other public school.

The LEA charter school board of directors is required to adopt and ensure that the LEA implements the Idaho Special Education Manual.

### **Section 1. Definition and Parent/Student Rights**

#### **A. Definition of Charter Schools**

In Idaho, a charter school is a public school authorized by Chapter 52, Title 33-5205, Idaho Code. A charter school operates as a nonprofit, publicly funded, nonsectarian school in one of ~~two~~ three ways:

1. as a school within a district, if authorized by the local board of trustees of a school district (LEA); ~~or~~
2. as a school authorized by the district, but operating as a separate LEA; or
3. as its own LEA, if authorized by the Idaho Public Charter School Commission or a college or university.

A charter school is bound by the conditions of its charter, all federal laws, and Idaho Code.

#### **B. The Rights of Charter School Students and Their Parents**

~~A charter school student is a public school student. Students with disabilities who attend charter schools and their parents have all of the same rights granted to students who attend other public schools. These rights are provided under the IDEA 2004; the Elementary and Secondary Education Act (ESEA), reauthorized as the No Child Left Behind Act (NCLB); Section 504 of the Rehabilitation Act (Section 504), the Americans with Disabilities Act (ADA); and the Family Education Rights and Privacy Act (FERPA). Idaho law specifically states that charter schools cannot discriminate against any student on any basis prohibited by federal or state constitutions or any federal, state, or local law. Under Idaho State Law, the charter of an authorized charter school outlines specific mission statements, policies and procedures.~~



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1. Charter schools must have open enrollment that includes:
  - a. giving all students an equal opportunity to attend
  - b. being open and accessible to all students, including students with disabilities; and
  - c. admitting students on the basis of a lottery if more students apply for admission than can be accommodated
2. A charter school shall not adopt an admission standard, policy or procedure that would have the effect of prohibiting or discouraging a student with a disability from enrolling or attending, or have the effect of prohibiting or discouraging a parent of a student with a disability from enrolling his or her child in the charter school by:
  - a. establishing an examination or other academic criteria for admission;
  - b. requiring any activity in which the school is unwilling to accommodate or adapt their curriculum or academic standards to meet the needs of the student with a disability; and
  - c. requiring any activity in which the school suggests implicitly or explicitly that another school district would be a better placement or more capable of providing special education services or delivering education instruction (commonly referred to as “counseling out”).
3. A charter school must provide every student with a disability a Free and Appropriate Public Education (FAPE), which shall include appropriate special education services starting the first day of school or upon the first day the student enrolls and begins attending school.

Under Idaho State Law, the charter of an authorized charter school outlines specific mission statements, policies and procedures, and the manner by which special education services will be provided.

## **Section 2. Responsibility for Services**

### **A. Charter School Authorized by the District and not an LEA** (See definition in Section 1.A.1)

The district is ultimately responsible to ensure that the requirements of the IDEA 2004 are met with respect to students attending charter schools authorized by the district. A charter school's compliance with the IDEA 2004, Part B, is required regardless of whether the charter school receives any Part B funds.

1. To ensure that a charter school authorized by the district meets the IDEA 2004 requirements, the district shall ensure services to students with disabilities attending the charter schools are provided in the same manner as the district serves students with disabilities in its' other schools, including providing supplementary and related services onsite at the charter school to the same extent to which the district has a policy or practice of providing such services on the site to its' other public schools.
2. The district shall have information on file with the State Department of Education (SDE) that demonstrates students with disabilities who attend charter schools authorized by the district will receive special education and related services from either the district or the charter school (or a combination of both).
3. The district will ensure that its charter schools participate in all monitoring activities conducted by the SDE.
4. The district shall provide Part B funds and comparable services to the charter school within the district on the same basis as it provides such funds to other public schools within the district.

### **B. Charter School Operating as an LEA** (See definition in Section 1.A.2)

~~Only the Idaho Public Charter School Commission, has the authority to allow the creation of a public charter school that operates as an LEA.~~ Charter schools authorized by the Idaho Public Charter School Commission or a college or university, are automatically LEAs. A district authorized school may with the approval of the district become an LEA. A charter school LEA, whether virtual or brick-and-mortar or combination thereof, has an obligation to accept and appropriately serve students with disabilities and is solely responsible to ensure that the requirements of the IDEA 2004 are met with respect to students enrolled. Compliance with the IDEA 2004, Part B, is required regardless of whether the public charter school receives any Part B funds. A charter school LEA shall:

1. participate in all monitoring activities conducted by the SDE; and,

2. in its first year of operation, participate in an onsite technical assistance visit by an SDE special education ~~monitoring~~ team to ensure that the essential components of a special education program are in place.

### **Section 3. Essential Components of a Special Education Program**

The Idaho charter school law requires each petition for a charter to describe the manner by which special education and related services will be provided to eligible students with disabilities.

Prior to approving a petition for a charter school, the authorizing entity—~~either the district or the Idaho Public Charter School Commission~~—shall ensure the petition includes:

1. Provisions for nondiscriminatory enrollment procedures to be publically displayed on the charter school's website and in the charter school's enrollment application form.
2. Adequate plans, policies, procedures, contractual or other arrangements, and budget to ensure that students with disabilities attending the charter school will receive special education and related services that meet all the requirements of the IDEA 2004. The petition should describe how the charter school ~~and its authorizing entity~~ will:
  - a. have special education and related services as identified in student IEPs, in place by the first day of the school year;
  - b. conduct Child Find activities and evaluations;
  - c. develop, review, and revise IEPs in accordance with state and federal law;
  - d. employ and use highly qualified special education personnel;
  - e. meet LRE requirements;
  - f. implement the IDEA 2004 discipline procedures; and
  - g. protect student and parent rights.
3. Provisions to employ special education and related services professionals who are appropriately licensed and/or certificated for the duties they are assigned.
4. A provision for professional development plan for the training needs of special education personnel as well as general education teachers in order to meet the needs of students with disabilities who are enrolled in the charter school.

5. A plan that ensures access to charter school programs, as required by the ADA. This plan may include the actual location of the school, classrooms, and settings within the classrooms to permit access by students with disabilities.
6. A transportation plan for special education students who may, because of the nature of their disabilities, be entitled to specialized transportation as a related service, even if the charter school does not provide transportation to other students.
7. Provisions for notifying the authorizing entity in the event that a formal complaint or due process hearing request is filed by or on behalf of a charter school student.

#### **Section 4. Charter Schools and Dual Enrollment**

~~The Board of Trustees of a district shall adopt procedures governing dual enrollment. The parent or guardian of a student of school age who is enrolled in a public charter school shall be allowed to enroll the student in a public non-charter school for dual enrollment purposes. Any charter school student participating in dual enrollment may enter into any program in the non-charter public school that is available to other students. Special education services (specially designed instruction and related services designed to meet the unique needs of a student with a disability) will be provided as appropriate only in conjunction with enrollment in academic or non-academic programs so the students can meet the education standards of the district.~~

According to Idaho Code, parents of public charter school students “shall be allowed to enroll the student in a public school for dual enrollment purposes.” Special education services (specifically designed instruction and services calculated to meet the unique needs of a student with a disability) shall be the obligation of the public charter school. The district shall allow public charter school students who are eligible for special education and who are otherwise qualified to participate in school programs under the dual enrollment law to:

1. enroll in general education courses under the same criteria and conditions as students without disabilities; and
2. receive accommodations in the general education courses for which they are enrolled on a 504 plan, if needed.

Public charter school students may not dually enroll solely for special education. The Board of Trustees of the public charter school and the traditional school district shall adopt procedures governing dual enrollment.

For detailed requirements and responsibilities governing dual enrollment of charter school students, see Idaho Code 33-203 in Appendix 8.

## Section 5. Funding

### A. State Funds

The SDE will make apportionment payments (from state general funds) to each charter school based on attendance figures. The SDE will pay state funds directly to charter schools using the funding formula described in state law. A charter school may also be eligible for the following funds:

1. state funds for special education students who live in licensed group, foster, or personal care services homes under the provision of Idaho Code 33-1002B;
2. district-to-agency contract funds under a provision of Idaho Code 33-2004;
3. funds to serve high numbers of students with emotional disturbance under Idaho Code 33-2005; and
4. state enhancement funding sources.

### B. Federal Funds

The SDE disburses federal flow-through funds to all authorized local education agencies (LEA<sup>2</sup>s).

1. Charter School ~~Authorized by the District~~ as Part of a District (not an independent LEA)

The district provides funds under Part B to those charter schools that are part of the district on the same basis as the district provides funds and comparable services to the other public schools. This includes proportional distribution based on relative enrollment of students with disabilities. This distribution is made at the same time as the district distributes funds to their other public schools and must be consistent with Idaho's charter school law. The individual school's approved charter will identify whether the district will provide funding or services of comparable value.

- a. The amount of funds or comparable services will generally be equal to the per student amount the district is allocated from the SDE in the current year multiplied by the charter school's ~~December 1~~ Child Count from the **previous** school year.
- b. Under certain circumstances the district shall allocate Part B funds to an eligible charter school based on the number of special students enrolled and served in the **current** school year.

- 1) The district will allocate funds to a charter school within 5 months of opening or significantly expanding its enrollment if the charter school notifies the district at least 120 calendar days before it opens or significantly expands its enrollment due to a significant event that is unlikely to occur on a regular basis (such as the addition of one or more grades or educational programs in major curriculum areas), and it takes place before February 1.
  - 2) When these conditions are met, the district will allocate funds to the charter school as follows:
    - i. If the opening or expansion occurs prior to November 1, the charter school will be allocated funds in the current school year based on the current school year's ~~December 1~~ Child Count.
    - ii. If the opening or expansion occurs after November 1 but before February 1, the charter school will be allocated a pro-rata share of funds in the current school year based on the number of enrolled special education students with active IEPs 30 days after the opening or expansion. The pro-rata share will be the number of days the charter school will be open or expanded, divided by the number of days in the school year, multiplied by the number of special education students.
  - 3) If the opening or expansion occurs on or after February 1, the charter school will be allocated funds in the following school year based on the **following** school year's ~~December 1~~ Child Count.
- c. For school districts that have authorized a virtual charter school and the charter school's students are enrolled in the district but live outside district boundaries and receive education outside the district, the SDE will determine the district's Part B funding in the following way:
- 1) The calculation of the district's allocation will be made exclusive of the charter school's enrollment and special education enrollment (student count).
  - 2) After calculating the allocations for all districts using the federal funding formula and the distribution formula for any supplemental award, the SDE will determine the statewide average per-student allocation.
  - 3) The SDE will add to the district's base allocation an amount equal to the statewide average per-student allocation times the number of

students with disabilities enrolled in and determined to be eligible for  
and receiving special education services.

4.

2. Charter School Operating as an LEA

Public charter schools that are LEA's are responsible for adopting and implementing approved policies and procedures for special education and providing an assurance that funds will be used in accordance with Part B allowable uses.

- a. In the second and subsequent years of operation, Charter School LEAs will be allocated Part B funds in the same manner as all school districts – in accordance with the federally prescribed funding formula for the distribution of flow through funds.
- b. The policy for providing federal special education funds to new charter LEAs in the first year of operation, as required by federal regulation, includes the following steps:
  - 1) The LEA submits its ~~December 1~~ Child Count as required by IDEA 2004.
  - 2) A SDE Special Education monitoring team visits the new LEA to review the files of the students reported on the Child Count.
  - 3) The monitoring team determines the number of students meeting all eligibility requirements and receiving appropriate special education and related services.
  - 4) Based upon the number of students determined to be eligible, amounts of first- year Part B funds for allocation to the charter LEA are calculated as follows:
    - i. The statewide average per-student amount of Part B funding in the current year is determined.
    - ii. That amount is multiplied by the number of students who meet all eligibility requirements and are receiving appropriate special education services to determine the total allocation.
  - 5) The charter LEA then shall complete the Part B application documents. These include:
    - i. Assurances and Policies and Procedures Adoption
    - ii. Maintenance of Effort Assurance

- iii. Title Part B Budget Form
- 6) Once the application is submitted and approved, the charter LEA may begin drawing down these funds for the approved special education purposes.





**Chapter 9**  
**PRIVATE SCHOOL STUDENTS**

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**Chapter 9  
Private School Students**

Note: For the purposes of this manual, the term “private school student” is the same as a “nonpublic school student.” A student enrolled in a homeschool is not considered a private school student. A student who is enrolled in a virtual public school is not considered a homeschooled student for the duration that they attend that virtual public school.

The Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) and Idaho Administrative Code includes the following:

- statutory and regulatory language, which states that students who are voluntarily enrolled in private schools are not entitled to all of the same services, including the right to a free appropriate public education (FAPE), as public school students;
- district responsibilities for special education students under Idaho’s dual enrollment law; and
- the legal requirements that come into play when a parent unilaterally enrolls his or her child in a private school and asks the district for reimbursement of these costs.

**Section 1. Definitions of Private School Placements**

In order to describe the district’s responsibilities for serving private school students, it is helpful to distinguish three separate ways that students are placed in private schools. These are defined by who enrolls or places the student in a private school and why.

**A. Definition of Voluntary Enrollment by a Parent**

A parent may choose to enroll his or her child in a private school for a variety of personal reasons, such as to obtain a religious education, to attend a school with a particular philosophy or curriculum, or because the parent is dissatisfied with the services offered or provided by the district. This is considered a voluntary enrollment. See Section 2 and Section 4 of this chapter for district responsibilities. Note: The IDEA distinguishes between for profit and nonprofit private schools. If a student is placed in a for profit private school by their parents the service plan provisions do not apply.

**B. Definition of District Placement**

At times, the district may place a student in a private school or facility to fulfill its obligation to provide FAPE. These placements are always made by an individualized education program (IEP) team in accordance with the requirements of Section 3 of this chapter.

**C. Definition of Unilateral Placement of Students with Disabilities by their Parents when FAPE is an Issue**

A parent may ~~withdraw a student with a disability from a public school and then enroll the a~~ student in a private school or provide services from a private provider at ~~parent~~ parental expense ~~because he or she believes the district has not provided FAPE in a timely manner.~~ The parents may ~~attempt to~~ initiate a due process hearing to seek reimbursement for the costs associated with the placement ~~from the district.~~ All students who are placed by a parent when FAPE is an issue are also voluntarily enrolled in a private school. Specific information regarding a parent's request for reimbursement of costs of student enrollment in a private school in this situation is included in Section 5 of this chapter.

**Section 2. Students Voluntarily Enrolled by Parents**

**A. District Consultation with Private School Representatives** (may be done in coordination with Title 1 requirements for consultation)

To ensure timely and meaningful consultation a district will consult with private nonprofit elementary and secondary school representatives and representatives of parents of parentally placed private school students with disabilities during the design and development of special education and related services for the students. The consultation process shall include;

1. Child Find: The Child Find process and how parentally placed private school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process.
2. Proportionate Share of Funds: The determination of the proportionate amount of federal special education funds available to serve parentally placed private school children with disabilities under this subparagraph, including the determination of how the amount was calculated. Refer to Section 2G of this chapter for information regarding the calculation of the proportionate share of funds.
3. Determination of Special Education and Related Services: Given the amount of funds to be dedicated by the district, the discussion will include the consideration of how, where, and by whom special education and related services will be provided for parentally placed private school students with disabilities, including:
  - a. types of services, including direct services and alternate service delivery mechanisms;
  - b. how such services will be apportioned if funds are insufficient to serve all students;
  - c. how and when these decisions will be made; and
  - d. how the provided services will be evaluated.

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4. Ongoing Communication: Clarify how the private school and district will operate throughout the school year to ensure that parentally placed private school students with disabilities identified through the Child Find process can meaningfully participate in special education and related services. Annual consultation is not required to make these decisions. The district determines the period between consultations based on changing circumstances within the district, such as significant changes in the total amount of funds to be expended and/or the number and location of private school students with disabilities.
5. Written Affirmation: When timely and meaningful consultation has occurred:
  - a. the district will obtain a written affirmation signed by the representatives of participating private schools;
  - b. if the representatives do not provide the affirmation within a reasonable period of time the district will forward the documentation of the consultation process to the State Department of Education (SDE).
6. District Decisions: Following consultation with the private school representatives, the district will make final decisions concerning items a-d addressed above in number 3.
7. Written Explanation by the District Regarding Services: If the district disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the district will provide to the private school officials a written explanation of the reasons why the district chose not to provide services directly or through a contract.

**B. Compliance with Consultation Process**

1. General Compliance: A private school official has the right to submit a complaint to the SDE that the district:
  - a. did not engage in consultation that was meaningful and timely; or
  - b. did not give due consideration to the views of the private school official.
2. Procedure for Complaint
  - a. If the private school official wishes to submit a complaint, the official will provide the basis of the complaint to the SDE Special Education Office of Dispute Resolution.
  - b. The district will forward the appropriate documentation to the SDE.

- c. The SDE will render a written decision whether the district complied with the consultation process requirements.
- d. If the private school official is dissatisfied with the decision of the SDE, the official may submit a complaint to the Secretary of the US Department of Education by providing the basis of the complaint against the district to the Secretary, and the SDE will forward the appropriate documentation to the Secretary.

### **C. Child Find Requirements**

The district shall have an ongoing Child Find system to locate, identify, and evaluate all students with disabilities ages three (3) through twenty-one (21) who are educated within the district's geographic boundaries. This includes students who have been placed by a parent in a private nonprofit elementary or secondary school (including a religious school) located in the district regardless of the student's state or local residency. Note: Parents can also ask the district of residence (assuming it is different than the district where the private school is located) to evaluate their student. Both districts would have Child Find responsibilities and cannot share information between the districts without written parental consent. The district of residence would have Child Find responsibilities for students placed in for-profit schools and for children aged three (3) to five (5).

The Child Find process will be designed to encompass the following:

1. The Child Find process will ensure the equitable participation of parentally placed private and homeschool students with disabilities.
2. Child Find activities for private school students will be similar to Child Find activities for public school students, which include the evaluation process within comparable timelines.
3. The district will consult with private school representatives and representatives of parents who place their children in private schools regarding the Child Find procedures.

Note: The cost of Child Find is not counted toward the pro-rated proportionate share that the district must spend on services.

### **D. Annual Count of Eligible Students**

The district shall conduct an annual count ~~on December 1~~ of eligible students and report to the State Department of Education the number of private school children evaluated, the number found eligible and the number who are provided with special education services. Students aged three (3) to five (5) must have their special education services identified on an IEP since Idaho does not have state-funded preschool programs. This includes 3-5 year olds identified though the



~~child find process that are enrolled in private schools that meet the definition of an elementary school.~~ This count will be used to determine the amount of funds the district shall expend providing special education and related services to private school students in the next school year (see Section 2E). The district will consult with representatives of private school students to determine how to conduct the count.

## **E. Provision of Services**

Provision of services applies to all eligible students who attend non-profit private elementary and secondary schools within the district's geographical boundaries regardless of where they reside. Parentally placed private school students with disabilities do not have an individual right to receive some or all of the special education and related services that the student would receive if enrolled in a public school. Services offered to parentally placed private school students are determined through the district and private school consultation process.

### **1. District Responsibilities**

- a. Private school students with disabilities may receive a different amount of services than public students with disabilities; they are not entitled to every service or the amount of service that they would receive if enrolled in public school. This means that it is possible for a private school student to receive only a related service or piece of equipment.
- b. Special education and related services provided to parentally placed private school students with disabilities, including materials and equipment, will be secular, neutral and non-ideological.
- c. The district is required to offer FAPE to private school students who reside in their district, including when the student attends a private school outside of the district boundaries. Unless ~~unless~~ the parent makes clear their intention to keep their child in the private school, the district of residence must develop an IEP.
- d. Services may be provided at a public school building or another agreed upon site (including parochial schools to the extent consistent with the law) determined by the district in consultation with appropriate representatives of private school students.
- e. Services provided to private school students with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools.

### **2. Eligibility for Services**

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If an evaluation team determines that a student needs special education and related services:

- a. The district of residence shall offer to make FAPE available upon enrollment or dual enrollment in a district public school; The district of residence must develop an IEP for the student who is parentally placed unless the parent makes clear an intent not to consider public school enrollment. The district has no obligation to implement that IEP unless the student enrolls in the public school; or.
- b. If the parent chooses not to enroll the student in the district of residence and designated funds are available in the district in which the private school is located, a meeting will be held to develop a Services Plan (SP). The meeting will include a representative of the private school to develop a SP. The SP is developed by the same members that would constitute the IEP team.
- c. Any services the district provides to a private school student shall be in accordance with an SP.

3. Service Plan (SP) Development

The SP shall describe the specific special education and related services that will be provided to the student in light of the determinations that have been made by the district. To the extent appropriate, the district shall initiate and conduct meetings to develop, review, and revise SPs in accordance with the following requirements:

- a. Given the services that the district has elected to provide to private school students, the SP must meet the requirements of the IEP to the extent appropriate (see Chapter 5). The SP excludes sections pertaining to:
  - 1) extended school year (ESY) services;
  - 2) participation in statewide and district wide assessments;
  - 3) placement determination (least restrictive environment);
  - 4) ~~December 1~~ Child Count federal report settings; and
  - 5) elements that, although typical for an IEP, would be inappropriate given the services the district has elected to provide.
- b. An SP shall be in effect at the beginning of each school year and accessible to each person responsible for its implementation.
- c. Meetings shall be held to review and revise SPs at least annually to address any lack of student progress toward goals and in the general education curriculum.

- d. The SP team members include the same members as an IEP team. The district will ensure that a representative of the private school attends these meetings or participates by some other means.
- e. A parent shall be invited to SP meetings at a mutually agreed upon date and time. The invitation must indicate the purpose, time, and location of the meeting. The parent shall be informed that he or she may bring other persons knowledgeable about the student to the meeting. A copy of the SP will be given to the parent.
- f. The team developing the SP will consider the student's strengths and results of the most recent evaluations. The private school general education teacher should participate in the development, review, and revision of the SP.
- g. If necessary for a private school student to benefit from or participate in the services the district has elected to provide, the district shall provide transportation from the student's school or home to the site where services will be provided. The district shall take the student back to either the private school or the home, depending on the timing of the services. In this sense, transportation is not a related service but a means of making the services offered accessible. Transportation costs may be included in the district's expenditure requirement. The district is not required to transport the student from home to the private school.

#### **F. Dispute Resolution**

Due process hearings are available to parents of private school students only on the issue of Child Find and evaluation. Parents may challenge decisions regarding the provision of services by filing a ~~formal~~ state administrative complaint with the SDE. (See Chapter 13 for more information on dispute resolution options.)

#### **G. Determining the Proportionate Funding for Private School Students**

IDEA 2004 requires school districts to dedicate at least a proportionate share of funds received under Part B to provide services for parentally placed students with disabilities who attend private schools within the boundaries of the district, regardless of their place of residence. To determine this proportionate amount, the district shall first determine the number of these private school students through the Child Find activities developed in the consultation process with private school representatives.

The number of parentally placed private school students is divided by the total (public and private) number of students with disabilities in the district to arrive at the percentage of private school students with disabilities. This percentage is then applied to the total funding received by

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the district under Part B grants Section 611 (ages three (3) to twenty-one (21)) and Section 619 (ages three (3) to five (5)) to determine the district's obligation.

**Example for the XYZ School District:**

- a. The number of parentally placed private school children within the district on December 1, ~~2005~~ 2015: **10**
  - b. The number of public school children with disabilities on December 1, ~~2005~~ 2015: **90**
  - c. Percentage of private school children with disabilities: **A** divided by **A+B = 10%**
  - d. Total Part B funds allocated for school year ~~2006-2007~~ 2016-2017: **\$150,000**
  - e. Amount the district shall spend on providing special education and related services to parentally placed private school students in ~~2006-2007~~ 2016-2017:  
**C x D = \$15,000**
1. State and local funds may supplement but may not supplant the proportionate amount of Federal funds required to be expended for parentally placed private school children with disabilities.
  2. The costs of private school consultations and of carrying out Child Find activities may not be paid from the proportionate share of funds.
  3. The cost of any special education or related service, such as direct service, consultation, equipment, materials, or transportation may be used to determine that the district has satisfied its expenditure requirement for private school students with disabilities.
  4. If all proportionate funds set aside for private school students in a given fiscal year are not expended in that year they shall be carried forward into the next year for the purpose of providing equitable services.

**H. Expenditure Guidelines**

1. The district may place equipment and supplies that are purchased with Part B funds in a private school for a period of time needed for a program for eligible students with disabilities; however, the district shall:
  - a. retain title and exercise continuing administrative control over all equipment and supplies;

- b. ensure that all equipment and supplies are used only for Part B purposes;
  - c. ensure that all equipment and supplies can be removed without remodeling the private school; and
  - d. remove equipment and supplies if necessary to prevent unauthorized use.
- 2. The district may use Part B funds to pay an employee of a private school to provide services to students with disabilities when the employee performs the services:
  - a. outside of his or her regular hours of duty; and
  - b. under public supervision and control.
- 3. Part B funds shall not be used to:
  - a. finance the existing level of instruction in the private school or otherwise benefit the private school;
  - b. meet the needs of the private school; or
  - c. meet the general needs of students enrolled in the private school.
- 4. Part B funds shall not be used for repairs, remodeling, or construction of private school facilities.
- 5. If it is possible for classes to include students enrolled in both public and private schools, then the classes must not be organized separately on the basis of school enrollment or religion.
- 6. The district shall not appropriate any funds to private schools controlled by any church, sectarian, or religious denomination.

### **Section 3. Students Placed by the District**

When the district places a student with a disability in a private school or facility, as a means of providing special education services through the IEP team process, the district shall ensure the following:

- 1. All special education procedures and timelines are followed.
- 2. Special education and related services are provided in accordance with an IEP.

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3. A representative of the private school or facility attends or participates in the meeting to develop the IEP. If the representative cannot attend other measures such as conference telephone calls will be used to ensure participation.
4. The responsibility for reviewing and revising IEPs remain with the district.
5. Services are provided at no cost to the parent, including reimbursement to the parent for transportation and other costs associated with participation at an IEP meeting conducted in a geographical area outside the jurisdiction of the district.
6. The placement in the private school or facility is the least restrictive environment for that student.
7. The student is provided an education that meets state and district standards.
8. The student is afforded the same rights as students with disabilities who attend public schools.
9. The parent is afforded the same rights as parents of students attending public schools.

In accordance with federal and state law, the SDE shall approve special education programs in private schools and facilities. The district shall ensure a program is approved prior to placing a student in that school or facility.

At the discretion of the district, once a student with a disability enters a private school or facility, meetings to review and revise the IEP may be initiated and conducted by the private school or facility. If the private school conducts a meeting, the district shall ensure that the parent and a district representative are involved in and agree to any proposed changes in the IEP before the changes are implemented.

#### **Section 4. Dual Enrollment of Private School Students by Parents**

According to Idaho Code, parents of private school students “shall be allowed to enroll the student in a public school for dual enrollment purposes.” Private school students who are dually enrolled are considered to be nonpublic school students. The district shall allow private school students who are eligible for special education and who are otherwise qualified to participate in school programs under the dual enrollment law to:

1. enroll in general education courses under the same criteria and conditions as students without disabilities; and
2. receive accommodations in the general education courses for which they are enrolled on a Section 504 plan, if needed.

Private school students may not dually enroll solely for special education and/or related services. The dual enrollment statute does not establish an entitlement to FAPE for a student with a disability. This means that there is no individual right to receive some or all special education services that the student would receive if enrolled in public school.

The reporting of attendance for private school students in the district is allowed under dual enrollment. If a student attends at least 2.5 hours per week without rounding hours, he or she shall be included in the weekly aggregate attendance. The average daily attendance (A.D.A.) is computed as .5 if the aggregate weekly hours are 2.5 or greater but less than 4.0 hours. When there are 4.0 hours or greater, divide by 4 to get the A.D.A.

Dually enrolled private school students could also be eligible to receive services that have been agreed upon through the district and private school consultation process. These services would be delivered through a SP.

## **Section 5. Unilateral Placement of Student by Parents when FAPE is an Issue**

### **A. General Provisions for Reimbursement to the Parent**

1. The district is required to make FAPE available to all eligible students with disabilities. If parents do not access FAPE, then the district is required to make provisions for private school students to receive Part B services consistent with Section 2E of this chapter.
2. The district is not required to pay for costs of tuition, special education, or related services and associated costs at a private school or facility for a student who was unilaterally placed there by a parent if the district made FAPE available to the student in a timely manner. If a parent disagrees with the availability of FAPE and there is a question about financial responsibility, the parent may request a due process hearing.
3. If the parent of a student with a disability, ~~who previously received special education and related services from the district~~, enrolls the student in a private elementary or secondary school or obtains services from a private provider at parent expense, without the consent of the district, a court or hearing officer may order the district to reimburse the parent for the costs of unilaterally placing the student in a private school if the court or a hearing officer determines that:
  - a. the district had not made FAPE available to the eligible student in a timely manner prior to the time the parent enrolled the student in the private school; and
  - b. the parent's placement is appropriate.

4. A hearing officer may find a student's placement in a private school or facility by a parent appropriate even if the private school or facility does not meet state standards. A private school will be deemed appropriate if the parent demonstrates that the private placement provides educational instruction specially designed to meet the unique needs of the child with a disability, supported by such services as are necessary to permit the child to benefit from that instruction.

**B. Denial or Reduction of Reimbursement to the Parent**

A court or hearing officer may reduce or deny reimbursement to a parent for the cost of a unilateral placement in a private school or facility under the following circumstances:

1. The parent did not inform the district that he or she rejected the placement proposed by the district to provide FAPE and did not state his or her concerns and intent to enroll the student in a private school. This ~~written~~ notification by the parent shall be provided to:
  - a. the IEP team at the most recent IEP meeting prior to removing the student from the public school; or
  - b. the district, in writing, at least ten (10) business days (including any holidays that occur on a business day) prior to removing the student from public school.
2. Prior to removal of the student from the public school, the district informed the parent of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parent did not make the student available for the evaluation.
3. A judicial decision finds unreasonableness with respect to the actions taken by the parent.

Reimbursement shall not be reduced or denied under any of the following circumstances:

1. The district did not notify the parent of his or her obligation to provide the notice set forth in number 3 above or the district prevented the parent from providing that notice.
2. The parent had not received written notice.



3. The district's proposed placement would likely result in physical harm to the student.

Reimbursement may not be reduced or denied at the discretion of a court or hearing officer for failure to provide this notice if:

1. The parents are not literate or cannot write in English, or
2. The district's proposed placement would likely result in serious emotional harm to the student.

### **Section 6. Out of State Students Residing in Residential Facilities**

For school-age special education students from outside the state of Idaho who, due to the nature and severity of their disabilities, are residing in licensed public or private residential facilities within the state of Idaho, the school district in which the residential facility is located will provide education services to such students if requested by the licensed public or private residential facility and an agreement is entered into with the residential facility. The district will be given the opportunity to provide input on any federally required education programs or plans for such students.

#### **A. Contract for Education Services**

The contract with a residential facility will include the following provisions:

1. The education services to be provided by the district.
2. The amount to be paid by the licensed public or private residential facility.

The amount paid will be equal to the district's full cost of providing the education services delineated by the contract as determined by the district. Such students will be excluded from all average daily attendance and other reports provided to the state that would result in the distribution of state funding to the district.

In the event a residential facility fails to sign a contract with the district agreeing to pay the full cost for providing education services, the school district in which the residential facility is located will not be responsible for providing education services to the out-of-state students residing in the residential facility.

#### **B. Determining Residency**

In determining whether a student is from outside the state of Idaho, the school district in which the residential facility is located will determine the primary residency of the student's parent or guardian. Proof of Idaho residency will be established by showing an Idaho motor vehicle

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driver's license, payment of Idaho state income taxes, or other documentation definitively establishing residency within the state of Idaho.

In the event guardianship of an out-of-state student is established with an individual residing in Idaho, it will be presumed that the guardianship was established for the purpose of claiming in-state residency. In this case, the student will be considered an out-of-state student, unless it can be established to the district's satisfaction that the guardianship was not established to avoid payment of the district's full cost of providing the education services

If the district in which the residential facility is located is unable to determine the student's residency, it will be presumed the student's residency is outside the state of Idaho.

**Documents**

**Documents**

**Documents**

**Documents**

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**Documents**



**Affirmation of Consultation with Private School Officials  
and Representatives of Parents**

P.L. 108-448 Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) requires that timely and meaningful consultation occur between the district and private school representatives ~~and representatives of parents of parentally placed private school students with disabilities.~~

The following topics are to be discussed during the consultation:

- The Child Find process and how parentally placed private school students suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;
- The determination of the proportionate amount of Federal funds available to serve such students, including the determination of how the amount was calculated;
- The consultation process among the district, private school officials, and representatives of such students, including how such process will operate throughout the school year to ensure that such students identified through the Child Find process can meaningfully participate in special education and related services;
- How, where, and by whom special education and related services will be provided for such students, including a discussion of types of services, including direct services and alternate service delivery mechanism, how such services will be apportioned if funds are insufficient to serve all [such students], and how and when these decisions will be made; and
- If the district and a private school official disagree on the provision of services or types of services, the district will provide a written explanation of its decision to the private school official.

The district shall obtain a written affirmation signed by the representatives of participating private schools. If such representatives do not provide such affirmation within a reasonable period of time, the district shall forward documentation of the consultation process to the State Department of Education (SDE).

A private school official shall have the right to submit a complaint to the SDE that the district did not engage in consultation that was meaningful and timely or did not give due consideration to the views of the private school official. The district shall forward the appropriate documentation to the SDE. If the private school official is dissatisfied with the decision of the SDE, such official may submit a complaint to the Secretary of Education by providing the basis for the noncompliance.

Provision of equitable services shall be provided by employees of the district or through contract by the district with an individual, association, agency, organization, or other entity. Special

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education and related services provided to such students, including materials and equipment, shall be secular, neutral, and non-ideological.

The control of funds used to provide special education and related services, and title to materials, equipment, and property purchased with [Federal special education] funds shall be in the district for the uses and purposes provided, and the district shall administer the funds and property.

We agree that the district provided timely and meaningful consultation regarding the bulleted items above.

\_\_\_\_\_  
District Official

\_\_\_\_\_  
Date

\_\_\_\_\_  
Private School Official

\_\_\_\_\_  
Date

\_\_\_\_\_  
District Name & Number

\_\_\_\_\_  
Private School Name

**Chapter 10**

**IMPROVING RESULTS**

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## Chapter 10 Improving Results

This chapter reflects the changes in the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) that focus on improving educational outcomes, analyzing and reporting data to the public, and ensuring that personnel who work with students with disabilities are prepared to meet their unique needs.

### Section 1. Monitoring Priorities and Indicators

IDEA 2004 requires increased accountability for programs serving students with disabilities. Monitoring priorities include both performance and compliance goals. Accountability areas established by IDEA 2004 include a free appropriate public education (FAPE) in the least restrictive environment (LRE), Effective General Supervision, and Disproportionality. Each priority area encompasses specific performance indicators. These indicators include both performance and compliance components. Data on those indicators shall be collected, submitted to the State Department of Education (SDE), and publicly reported annually. That data shall be used to evaluate the effectiveness of programs and identify strategies to improve student outcomes.

The district is required to submit timely and accurate data from which the district's performance will be calculated ~~on the following goals~~ based on the indicators in the Idaho's State Performance Plan, posted online annually on the SDE website.

#### **~~A. FAPE in the LRE~~**

- ~~1. Graduation rate~~
- ~~2. Dropout rate~~
- ~~3. Participation and performance of students with disabilities on statewide assessments~~
- ~~4. Suspension and expulsion rates for students with disabilities~~
- ~~5. Students ages six (6) to twenty one (21) educated with typically developing peers~~
- ~~6. Students ages three (3) to five (5) educated with typically developing peers~~
- ~~7. Students ages three (3) to five (5) developing positive social-emotional skills, early literacy, and behavior~~
- ~~8. School facilitation of parent involvement to improve services and results~~

**B. Disproportionality**

- ~~1. Representation of race/ethnicity in special education programs~~
- ~~2. Representation of race/ethnicity in specific disability categories~~

**C. Effective General Supervision**

- ~~1. Initial eligibility established within sixty (60) days of consent~~
- ~~2. Eligibility established for children referred from Part C and receiving services by their 3<sup>rd</sup> birthday~~
- ~~3. By age sixteen (16), students have a coordinated, measurable post-secondary goal(s) and transition services needed to meet their goals~~
- ~~4. Students no longer in secondary school who are employed or in post-secondary school, within one year of leaving high school~~
- ~~5. Identify and correct noncompliance as soon as possible, but no later than one (1) year from identification~~

**D.**

**A. SDE Responsibility**

As part of the SDE general supervision responsibilities, the ~~The~~ SDE is required to collect, review, and analyze data on an annual basis to determine if the state and districts are making adequate progress toward the required performance goals. This ~~monitoring~~ accountability process includes:

- ~~1. Measuring~~ measuring performance on goals both for the state and the districts.;
- ~~2. Monitoring~~ monitoring based on district performance data, and compliance data with the IDEA 2004 Regulations, and progress made toward meeting state goals.;
- ~~3. Identifying~~ identifying districts in one of the following categories: Meets Requirements; Needs Assistance; Needs Intervention; Needs Substantial Intervention.;
- ~~4. Providing~~ providing professional development and technical assistance statewide and targeted technical assistance to districts demonstrating the highest needs.;
- ~~5. Reporting~~ reporting to the public on the state and districts' performance on state goals.;

6. ~~Developing-developing~~ and submitting an Annual Performance Report ~~and revising~~ the State Performance Plan, as needed, to address state performance on required goals.

**E.**

**B. District Responsibility**

Progress on the state's performance goals is directly linked to the districts' efforts and progress in these same areas. On an annual basis and as part of the SDE's general supervision and accountability ~~Continuous Improvement Monitoring~~, the district shall:

1. ensure the data it collects and reports to the SDE regarding special education students and personnel is accurate;
2. use data-based decision-making procedures to review and analyze data to determine if the district is making adequate progress toward performance goals;
3. adjust strategies, as needed, to meet goals and improve student outcomes.

**Section 2. Comprehensive Early Intervening Services**

Under the IDEA ~~2004~~, the district may use up to 15% of its IDEA Part B allocation in any fiscal year to provide comprehensive early intervening services (CEIS) for students in kindergarten through grade twelve (12), ~~(with a particular emphasis on students in kindergarten through grade three (3) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.~~

These funds may be used for activities that include:

1. Professional development for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software
2. Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

Should a district be found in having significant disproportionality as provided under Part B, the district shall use 15% of its IDEA Part B allocations to provide comprehensive coordinated early intervening services.

### **A. Budget Requirements**

If the district chooses to use IDEA Part B funds in any fiscal year to provide CEIS, the district will budget the amount used to provide these services, up to a maximum of 15% of the total allocation, in the Part B budget that is submitted annually to the SDE as part of the Part B and Preschool Application.

### **B. Reporting Requirements**

When the district uses IDEA Part B funds to provide CEIS, an annual report shall be submitted to the SDE on:

1. The number of children who received CEIS; and
2. The number of children who received CEIS and subsequently receive special education and related services during the preceding two (2) year period.

### **C. Relationship between FAPE and CEIS**

CEIS provided by the district shall not be construed to either limit or create a right to FAPE under the IDEA ~~2004~~ or to delay appropriate evaluation of a student suspected of having a disability.

## **Section 3. Personnel**

The district shall ensure that personnel working with students with disabilities meet the qualifications established by the SDE and have the content knowledge and skills to meet the needs of these students.

### **A. Appropriate Certification or Licensure**

Public school personnel shall meet the appropriate certification or licensure requirements for position assignments. Complete certification standards for personnel providing special education or related services may be found in the handbook titled Idaho Standards for the Initial Certification of Professional School Personnel (~~April 2006~~). This handbook is available from the SDE Division of ~~School Support Services Certification~~ School Support Services Certification.

The lists that follow are ~~general guidelines~~ examples only. They do not include every possible position or licensing situation. For more information call the SDE Division of ~~School Support Services Certification~~ School Support Services Certification at 208/332-6800.

1. The following special education and related services positions require individuals who are employed by the district to be certificated and to meet any additional licensure requirements:
  - a. audiologist;
  - b. consulting teacher;
  - c. counselor;
  - d. director of special education;
  - e. early childhood special education teacher;
  - f. school psychologist;
  - g. special education teacher;
  - h. speech-language pathologist; and
  - i. supervisor/coordinator of special education.
2. Some special education service providers need both licensure in their area of expertise and certification from the SDE.
  - a. School nurses are certificated by the SDE and licensed by the State Board of Nursing.
  - b. School social workers are certificated by the SDE and licensed by the Bureau of Occupational Licenses.
3. Some special education service providers must meet the licensure or certification requirements in their respective professions, but certification from the SDE is not required.
  - a. Occupational therapists and physical therapists are licensed by the State Board of Medicine.
  - b. Vocational education teachers are certificated by the Idaho Division of Professional-Technical Education.
  - c. Vocational rehabilitation counselors must meet national standards for Certified Rehabilitation Counseling (CRC) to be employed by the Idaho Division of Vocational Rehabilitation.

4. Individuals who used a consultant specialist provision or a letter of authorization in the past are no longer able to use these emergency certificates as an alternative for individuals to become certificated teachers in Idaho. The district shall use the alternative authorization options to request alternative endorsement/certification when a professional position cannot be filled with someone who holds the appropriate endorsement/certification.

## **B. Highly Qualified Special Education Teachers**

In addition to being certified, K-12 special education teachers in the district who teach core academic subjects shall meet the “highly qualified teacher standards” identified in the Elementary and Secondary Education Act (ESEA) formerly known as No Child Left Behind (NCLB). The highly qualified special education teacher requirement does not apply to preschool programs since early childhood education is not a part of the Idaho public elementary and secondary school system at this time.

### **1. General Requirements for Special Education Teacher**

Any K-12 special education teacher who is not teaching a core academic subject and only consults with regular education teachers or reinforces instruction from a regular education teacher is highly qualified if the teacher holds a K-12 Exceptional Child Certificate. No waiver or temporary certification qualifies. However, a special education teacher can meet the general requirements of highly qualified if they are enrolled in an approved alternative route to certification program.

### **2. Requirements for Special Education Teachers Teaching a Core Academic Subject**

If a special education teacher is the primary deliverer of instruction in a core content subject, they shall have met the highly qualified teacher standard in each area taught.

### **3. Requirements for Special Education Teachers Teaching Multiple Subjects**

In the case of a teacher who is not new to the profession, the special education teacher shall demonstrate competence in all the core academic subjects which the teacher teaches in the same manner as is required for elementary, middle, or secondary school teachers who are not new to the profession.

In the case of a new special education teacher who teaches multiple subjects, and who is highly qualified in mathematics, language arts, or science, the teacher shall demonstrate competence in the other core academic subjects which the teacher teaches not later than two years after the date of employment.

4. Requirements for Special Education Teachers Teaching to Alternate Achievement Standards

Both new and veteran special education teachers who teach core academic subjects exclusively to students assessed against alternate achievement standards (students with significant cognitive disabilities) shall be highly qualified by either:

- a. meeting the ESEA NCLB Act requirement for any elementary, middle school, or high school teachers who are new or not new to the profession; or
- b. meeting the requirements of ESEA the Elementary and Secondary Education Act as applied to an elementary school teacher, or, in the case of instruction above the elementary level, demonstrate subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those grade level standards.

5. Assurance of Highly Qualified Standards

The district shall take measurable steps to recruit, train, hire, and retain highly qualified special education teachers. The district will collect and monitor data about special education personnel qualifications and ensure that personnel are appropriately and adequately prepared to serve students with disabilities.

In Title I schools, parents will be notified if students are taught for four (4) or more consecutive weeks by a special education teacher who is not highly qualified.

**C. Shortage of Personnel**

If there is a shortage of highly qualified personnel, the district shall take measurable steps to recruit and hire highly qualified personnel to provide special education and related services to students with disabilities. However, when a professional position cannot be filled with an individual who has the appropriate certification, vacant positions may be filled with personnel on the following approved alternate pathways to teaching:

1. Teacher to New Certification – An individual holds a Bachelor's degree and a valid teaching certificate without full endorsement in area of need. The candidate works towards completing a preparation program for special education certification and is employed by the district.
2. Content Specialist – An individual who is highly and uniquely qualified in an area holds a Bachelor's degree. The candidate works towards completing a preparation program while employed by the district. The preparation program must include mentoring, one classroom observation per month until certified, and prior to entering the classroom; the candidate completes an accelerated study in education pedagogy.

3. Computer Based Route to Teacher Certification – An individual may acquire interim certification through a computer-based alternative route to teacher certification that is approved by the State Board of Education. On November 4, 2003, the Idaho State Board of Education passed a temporary rule approving ABCTE (American Board for Certification of Teacher Excellence) as an alternate route to Idaho certification. During the interim certification, teaching shall be done in conjunction with a two year mentoring program approved by the State Board of Education.

Further information and all requirements for each alternative route to certification are available in Idaho Administrative Code (IDAPA 08.02.02) and the Idaho Standards for the Initial Certification of Professional School Personnel document.

Nothing in the IDEA 2004 creates a right of action for due process on behalf of a student or class of students for failure to employ highly qualified staff.

#### **D. Paraprofessionals, Assistants, and Aides**

The district may employ paraprofessionals, assistants, and aides who are appropriately trained and supervised to assist in the provision of special education and related services to students with disabilities if they meet standards established by the SDE (see the Documents section in this chapter).

Appropriate duties to be performed by paraprofessionals are:

1. ~~Provide~~ provide one-on-one ~~tutoring services~~ for ~~eligible~~ students ~~during non-instructional time by a teacher or related service provider as specified in the students' IEP;~~
2. ~~Assist~~ assist with classroom management and organizing materials;:
3. ~~Provide~~ provide assistance in a computer lab or media center;:
4. ~~Conduct~~ conduct parental involvement activities;:
5. ~~Act~~ act as a translator;:
6. ~~Assist~~ assist in provision of ~~instructional~~ services only under the direct supervision of a certified teacher or related service provider, specifically;
  - a. ~~Teacher~~ a teacher/related service provider plans instruction and evaluates student achievement;: and



- b. ~~Paraprofessional~~ the paraprofessional works in conjunction with works in close and frequent physical proximity to the teacher or related service provider as determined by the student's IEP.

A special education paraprofessional working in a Title I school-wide program shall be highly qualified as demonstrated by the competencies listed in the ESEA NCLB Act.

1. All Title I paraprofessionals must have a secondary school diploma or its recognized equivalent.
2. Additionally, except as noted below, paraprofessionals hired after January 8, 2002, and working in a program supported with Title I, Part A funds must have—
  - a. Completed two years of study at an institution of higher education(In Idaho, this is 32 credits from an accredited university or college); or
  - b. Obtained an associate's (or higher) degree; or
  - c. Met a rigorous standard of quality and be able to demonstrate, through a formal State or local academic assessment, knowledge of and the ability to assist in instructing, reading, writing, and mathematics (or, as appropriate, reading readiness, writing readiness, and mathematics readiness) (in Idaho this is the ETS Parapro Praxis with a minimum score of 460).

1. Strategies to Assist Individuals in Meeting Paraprofessional Standards

~~The district shall assist individuals in meeting the paraprofessional standards established by the SDE. A variety of strategies may be used to assist individuals in developing the skills necessary to meet the paraprofessional standards, including:~~

- a. ~~participating in on the job training with follow up provided by the supervising teacher;~~
- b. ~~reading printed materials;~~
- c. ~~participating in workshops;~~
- d. ~~viewing videos;~~
- e. ~~completing university course work;~~
- f. ~~conducting personal research and studying; or~~
- g. ~~training sponsored by the district.~~

~~2. Verifying that an Individual has Met Paraprofessional Standards~~

~~The district will determine the means of verification that will be used to assess whether individuals working with students with disabilities have met the paraprofessional standards. Competence may be demonstrated in a variety of ways, such as:~~

- ~~a. successful performance of duties;~~
- ~~b. interview with the paraprofessional;~~
- ~~c. observation;~~
- ~~d. portfolio assessment;~~
- ~~e. completion of a course or workshop; or~~
- ~~f. verification from a former employer.~~

The district may encourage qualified ~~para-educators~~ paraprofessionals employed in their classrooms to become certified teachers. The alternative route preparation program for para-educator to teacher must be completed within five (5) years of admission to the program. Candidates work toward completion of a preparation program while employed by the school district.

**E. Educational Interpreters**

The district may only employ an individual as an educational interpreter if they have met the state qualifications identified in Idaho Code 33-1304. Educational interpreters employed by the district shall complete a minimum of eighty (80) hours of training in the areas of interpreting or translating every five years.

**F. Supervision of Staff**

A teacher and/or a related service provider with appropriate certification or licensure who has been informed of his or her specific responsibilities related to a student's IEP has the primary responsibility to ensure the appropriate implementation of the IEP. The district has policies and procedures for the supervision and evaluation of all certificated/licensed or contracted employees.

The certificated/licensed teacher and/or related service provider will generally be responsible for the supervision of all paraprofessionals, assistants, and aides who provide direct services to students with disabilities. All paraprofessionals, assistants, and aides must have a supervision plan developed by a certificated or licensed professional.

### **G. Professional Development Plan**

The district will take measures to ensure that all personnel necessary to provide special education and related services according to the IDEA 2004 are appropriately and adequately prepared. Personnel may use a variety of opportunities for technical assistance and training activities to further develop professional knowledge and skills in order to meet the needs of students with disabilities.

To the extent the district determines it is appropriate, paraprofessional personnel may use the technical assistance and training activities offered by the district or SDE to improve practice for paraprofessional supports for special needs students (See Appendix for guidance materials for best practice. fulfill part of the Standards for Paraprofessionals Supporting Special Needs Students. See pages the Documents section of this chapter for a list of the standards.

**Documents**

**Documents**

**Documents**

**Documents**

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**Documents**

**Documents**

**~~\*Special Education HQT Document from Certification  
Standards for Paraprofessionals Supporting Students with Special Needs~~**

~~State and federal law requires paraprofessionals who assist in the provision of special education and related services have the skills and knowledge necessary to meet the needs of students with disabilities. To this end, the State Department of Education has developed “Standards for Paraprofessionals Supporting Special Needs”~~

~~Orientation and training in the paraprofessional’s first year of employment target entry level standards to ensure that all paraprofessionals are knowledgeable, have the skills needed to support the programs to which they are assigned, and comply with legal and policy requirements. Training to address intermediate standards can extend over a two year period and is planned according to the needs of the paraprofessional, as determined by the annual evaluation. Training to address advanced standards is not required.~~

~~(E) = Entry Level (I) = Intermediate (A) = Advanced~~

**~~Principle 1: The paraprofessional has a basic knowledge of the discipline(s) taught and supports the teacher/provider in creating learning experiences that make the subject matter meaningful for students.~~**

**~~Knowledge~~**

- ~~1. The paraprofessional has the basic academic skills needed to perform his or her assignments. (E)~~
- ~~2. The paraprofessional possesses basic educational terminology regarding students, programs, roles, and instructional activities. (I)~~

**~~Disposition~~**

- ~~1. The paraprofessional realizes how the application of learning is useful in life.~~

**~~Performance~~**

- ~~1. The paraprofessional demonstrates the academic skills needed to perform his or her assignment(s). (E)~~
- ~~2. The paraprofessional is able to use basic educational terminology to understand assigned tasks. (I)~~
- ~~3. The paraprofessional presents subject area content accurately to students. (I)~~

**Principle 2: The Paraprofessional has a basic knowledge of how students learn and develop and assists in providing opportunities that support the students' intellectual, social, and personal development.**

**Knowledge**

- ~~1. The paraprofessional understands which materials and activities are chronologically age appropriate. (I)~~

**Disposition**

- ~~1. The paraprofessional appreciates individual variations within each domain of development.~~

**Performance**

- ~~1. The paraprofessional uses developmentally appropriate and age appropriate strategies, equipment, materials, and technologies as directed by the teacher/provider. (I)~~

**Principle 3: The paraprofessional knows that students differ in their approaches to learning and assists in creating instructional opportunities that are adapted to students with diverse needs.**

**Knowledge**

- ~~1. The paraprofessional understands the impact that a disability or a combination of disabilities may have on a student's life. (E)~~
- ~~2. The paraprofessional knows about different methods that are used by teacher/providers to accommodate individual student learning needs. (I)~~
- ~~3. The paraprofessional has a basic knowledge of the strategies used to support the learning of students whose first language is not English. (I)~~
- ~~4. The paraprofessional has an awareness of common assistive technology devices used to accommodate student learner needs. (I)~~
- ~~5. The paraprofessional understands, in general terms, Idaho's special education requirements, including definitions, qualifications, and services. (I)~~
- ~~6. The paraprofessional knows about areas of exceptionality, such as learning disabilities, visual and perceptual difficulties, emotional and behavioral problems, physical and cognitive delays, and giftedness. (I)~~

- ~~7. The paraprofessional understands variations of beliefs, traditions, and values regarding disability across cultures and their effect on relationships among the student, the family, and school personnel. (A)~~

### **Disposition**

- ~~1. The paraprofessional has an appreciation of programs for students with diverse needs.~~
- ~~2. The paraprofessional believes that all students can learn.~~
- ~~3. The paraprofessional believes his or her role includes advocating for, encouraging, motivating, and facilitating individual learning.~~
- ~~4. The paraprofessional respects students as individuals with differing backgrounds, skills, talents, and interests.~~
- ~~5. The paraprofessional is sensitive to community and cultural norms.~~

### **Performance**

- ~~1. The paraprofessional uses his or her understanding of program requirements to carry out assignments. (E)~~
- ~~2. The paraprofessional persists in helping all students achieve success. (E)~~
- ~~3. The paraprofessional assists in adapting instructional strategies and materials according to student needs and ability levels. (I)~~
- ~~4. The paraprofessional assists the teacher/provider to maintain assistive/adaptive/medical services. (I)~~
- ~~5. The paraprofessional demonstrates the ability to carry out a variety of teacher/provider directed accommodations and adaptations to address the individual student's needs. (I)~~
- ~~6. The paraprofessional demonstrates proper lifting, carrying, and transferring techniques. (I)~~
- ~~7. The paraprofessional uses a number of teacher/provider directed strategies to support the learning of students whose first language is not English. (I)~~

**Principle 4: The paraprofessional understands and uses a variety of instructional strategies to assist the teacher/provider.**

### **Knowledge**

- ~~1. The paraprofessional knows where to access a variety of learning resources. (E)~~
- ~~2. The paraprofessional understands that students from diverse experiential, cultural, economic, and language backgrounds may need different strategies for learning. (I)~~
- ~~3. The paraprofessional has a basic understanding of a variety of instructional techniques used by the teacher/provider. (I)~~
- ~~4. The paraprofessional understands basic instructional, remedial, and accelerated methods, techniques, and materials for teaching a variety of students. (A)~~

### **Disposition**

- ~~1. The paraprofessional believes that a variety of instructional strategies may be necessary to meet individual needs.~~
- ~~2. The paraprofessional values flexibility and resourcefulness in supporting the teacher/provider in adapting and modifying instruction to address student needs.~~

### **Performance**

- ~~1. The paraprofessional uses a variety of instructional techniques as modeled by the teacher/provider. (I)~~
- ~~2. The paraprofessional locates and maintains a variety of instructional resources as directed by the teacher/provider. (I)~~

**Principle 5: The paraprofessional understands the impact of the educational environment on student learning, self-motivation, and positive social interaction and assists in creating a positive learning environment.**

### **Knowledge**

- ~~1. The paraprofessional understands district guidelines for protecting the safety, health, and well-being of students and staff (e.g., universal precautions for preventing illnesses and infections, the proper body mechanics for lifting students and heavy objects, CPR, and first aid). (E)~~
- ~~2. The paraprofessional understands how social groups function and influence people and how people influence groups. (I)~~
- ~~3. The paraprofessional recognizes factors and situations that are likely to promote or diminish intrinsic motivation and knows how to help students become self-motivated. (I)~~



- ~~4. The paraprofessional understands the goal of promoting student self-determination and self-advocacy skills and his or her role in supporting that goal. (I)~~
- ~~5. The paraprofessional has a general understanding of positive behavioral supports. (I)~~
- ~~6. The paraprofessional understands the demands of various classroom and non-classroom environments on individuals with diverse learning needs. (A)~~

### **Disposition**

- ~~1. The paraprofessional values the role of students in promoting one another's learning and recognizes the importance of peer relationships in establishing a climate of learning.~~
- ~~2. The paraprofessional recognizes the value of intrinsic motivation to students' lifelong growth and learning.~~
- ~~3. The paraprofessional values and understands student independence and the "dignity of risk."~~
- ~~4. The paraprofessional respects a wide diversity of beliefs, traditions, and values found across cultures and environments.~~
- ~~5. The paraprofessional is committed to helping students develop self-confidence and competence.~~

### **Performance**

- ~~1. The paraprofessional carries out school behavior management policies and practices. (E)~~
- ~~2. The paraprofessional uses positive behavioral supports, crisis intervention, and restraint techniques consistent with the district/agency policy. (E)~~
- ~~3. The paraprofessional assists in establishing a positive climate in the classroom and participates in maintaining such a climate in the school as a whole. (E)~~
- ~~4. The paraprofessional plans for smooth transitions between activities and environments. (E)~~
- ~~5. The paraprofessional maintains a safe and effective learning environment for academic and nonacademic settings (e.g., lunchrooms, study halls, playgrounds, and buses). (E)~~
- ~~6. The paraprofessional supports a learning community in which individual differences are respected and valued. (E)~~
- ~~7. The paraprofessional assists in creating a learning community in which students assume responsibility for themselves and one another, participate in decision-making, work collaboratively and independently, resolve conflicts, and engage in purposeful learning activities. (I)~~
- ~~8. The paraprofessional assists in modifying the learning environment to manage behavior. (I)~~
- ~~9. The paraprofessional implements behavioral prevention, intervention, and reinforcement plans that have been developed by the teacher/provider. (I)~~

**Principle 6: ~~The paraprofessional uses a variety of communication techniques, including verbal, nonverbal, and media in and beyond the classroom.~~**

**Knowledge**

- ~~1. The paraprofessional is aware of effective communication styles. (I)~~
- ~~2. The paraprofessional understands how diversity affects community in the classroom. (I)~~
- ~~3. The paraprofessional has an understanding of verbal and nonverbal communication. (I)~~
- ~~4. The paraprofessional has knowledge of the basic functions of multimedia technology (e.g., computer, video, recorder, projector). (I)~~
- ~~5. The paraprofessional has knowledge of basic computer software and functions, e-mail, and the Internet. (I)~~
- ~~6. The paraprofessional knows strategies and techniques that facilitate communication for students with diverse needs. (A)~~

**Disposition**

- ~~1. The paraprofessional values the ways in which people seek to communicate and encourages various modes of communication in the classroom.~~

**Performance**

- ~~1. The paraprofessional effectively communicates with team members. (E)~~
- ~~2. The paraprofessional is a thoughtful and responsive listener. (E)~~
- ~~3. The paraprofessional demonstrates sensitivity to cultural and other differences in communication methods (e.g., appropriate use of eye contact, interpretation of body language and verbal statements, acknowledgement of and responsiveness to different modes of communication and participation). (I)~~
- ~~4. The paraprofessional uses a variety of media communication tools, including audiovisual aids and computers, to enrich learning opportunities. (I)~~

**Principle 7: The paraprofessional implements teacher/provider designed instructional plans based upon knowledge of subject matter, students, the community, and curriculum goals.**

**Knowledge**

- ~~1. The paraprofessional understands that instruction is more effective when designed around student strengths, interests, and abilities. (I)~~
- ~~2. The paraprofessional knows that a variety of elements (instructional materials, individual student interests, needs, aptitudes, and community resources) are considered when planning instruction for students. (I)~~
- ~~3. The paraprofessional understands that curriculum and instructional planning are based on learning theory and child and adolescent development. (A)~~

**Disposition**

- ~~1. The paraprofessional believes that plans shall always be open to adjustment and revision, as directed by the teacher/provider, based on student needs, student input, and changing circumstances.~~
- ~~2. The paraprofessional values planning as a collegial and collaborative activity.~~
- ~~3. The paraprofessional values both long-term and short-term planning.~~

**Performance**

- ~~1. The paraprofessional follows teacher/provider written and verbal plans, seeking clarification as needed. (E)~~

**Principle 8: The paraprofessional supports the teacher/provider in evaluating the intellectual, social, and physical development of the student.**

**Knowledge**

- ~~1. The paraprofessional understands the purposes of formative and summative assessment and evaluation. (I)~~
- ~~2. The paraprofessional realizes the need to use multiple strategies to assess individual student progress. (I)~~
- ~~3. The paraprofessional understands the distinctions in the roles of teachers/providers, other licensed district/agency professionals, and paraprofessionals in assessing student strengths and needs. (I)~~

**Disposition**

- ~~1. The paraprofessional values ongoing assessment as essential to the instructional process and recognizes that many different assessment strategies, accurately and systematically used, are necessary for monitoring and promoting student learning.~~

**Performance**

- ~~1. The paraprofessional assists teachers/providers with maintaining student records required by the state or the district. (E)~~
- ~~2. The paraprofessional gathers information by using informal and functional assessment methods under teacher/provider direction. (I)~~
- ~~3. The paraprofessional objectively shares relevant information about student performance to assist the teacher/provider in the planning process. (I)~~
- ~~4. The paraprofessional assists in providing assessment accommodations and adaptations as designed by the teacher/provider. (I)~~
- ~~5. The paraprofessional administers formal assessments when given appropriate training and supervision. (A)~~

**Principle 9: The paraprofessional engages in continued professional improvement toward an identified goal.**

**Knowledge**

- ~~1. The paraprofessional has an awareness of his or her professional strengths and needs. (E)~~
- ~~2. The paraprofessional is aware of the personal biases and differences that affect job performance. (I)~~
- ~~3. The paraprofessional is knowledgeable about resources that provide opportunities for professional growth. (I)~~

**Disposition**

- ~~1. The paraprofessional embraces lifelong learning.~~
- ~~2. The paraprofessional is committed to ongoing reflection, assessment, and learning as a process.~~
- ~~3. The paraprofessional is committed to seeking, developing, and continually refining practices.~~

- ~~4. The paraprofessional values constructive feedback as a learning tool.~~
- ~~5. The paraprofessional values competency and integrity.~~

### **Performance**

- ~~1. The paraprofessional uses self-reflection as a means of improving job performance. (E)~~
- ~~2. The paraprofessional asks for and accepts feedback from the teacher/provider. (E)~~
- ~~3. The paraprofessional documents progress toward his or her professional development. (I)~~
- ~~4. The paraprofessional participates in meaningful professional development opportunities in order to demonstrate current, effective practices. (I)~~

**~~Principle 10: The paraprofessional interacts in a professional, effective manner with colleagues, parents, and other members of the community to support students' learning and well-being.~~**

### **Knowledge**

- ~~1. The paraprofessional understands the distinction between the roles of all team members in support of student learning. (E)~~
- ~~2. The paraprofessional understands the relationships among school personnel, families, and the larger community and how such partnerships foster student learning. (E)~~
- ~~3. The paraprofessional understands the common concerns that the parents of students with diverse needs may have. (E)~~
- ~~4. The paraprofessional knows how to respond respectfully to a parent, the community, or another educator in conflict situations. (E)~~
- ~~5. The paraprofessional knows the rights and responsibilities of parents, students, teachers, professionals, and schools as they relate to students with learning needs. (E)~~
- ~~6. The paraprofessional knows signs of emotional distress, child abuse, substance abuse, and neglect in students and how to follow the procedures to report known or suspected abuse or neglect to the appropriate authorities. (E)~~
- ~~7. The paraprofessional understands the expectations for professional conduct, policies, procedures, and laws with regard to student and parent rights. (E)~~

### **Disposition**

- ~~1. The paraprofessional respects the need for beneficial relationships among families, school personnel, and community members.~~
- ~~2. The paraprofessional is concerned about all aspects of the student's well being and is alert to signs of difficulties.~~
- ~~3. The paraprofessional respects the dignity, rights, and privacy of students and families.~~
- ~~4. The paraprofessional is respectful of distinctions among the roles and responsibilities of paraprofessionals, professionals, and other team members.~~

### **Performance**

- ~~1. The paraprofessional respects student privacy, student rights, and the confidentiality of information. (E)~~
- ~~2. The paraprofessional effectively collaborates with team members. (E)~~
- ~~3. The paraprofessional follows teacher/provider instructions and honors team decisions in daily practice. (E)~~
- ~~4. The paraprofessional provides positive representation of the student, school, and district. (E)~~
- ~~5. The paraprofessional develops a rapport with students (e.g., talks with and listens to students) is sensitive and responsive to clues of distress, and seeks outside help as needed. (E)~~
- ~~6. The paraprofessional demonstrates professional conduct in accordance with district policies and state laws. (E)~~
- ~~7. The paraprofessional exercises objective and prudent judgment. (E)~~
- ~~8. The paraprofessional follows policy regarding reporting suspected child abuse, neglect, or threat of harm to the student or others. (E)~~

STATE DEPARTMENT OF EDUCATION  
DECEMBER 18, 2014

**Chapter 11**

**PROCEDURAL SAFEGUARDS**

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**Chapter 11  
Procedural Safeguards**

This chapter reflects changes in procedural safeguards as a result of the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004).

**Section 1. Procedural Safeguards Notice**

A ~~parent and/or adult student~~ parent/adult student has specific procedural safeguards given to him or her by the IDEA 2004 and state law. Each district has a document titled *Procedural Safeguards Notice* that is provided to parents/~~and/or~~ adult students which contains a full explanation of the special education rights. The *Procedural Safeguards Notice* shall include a full explanation of the procedural safeguards, written in the native language of the parents (unless it clearly is not feasible to do so) and written in an easily understandable manner.

**A. Procedural Safeguards Notice Contents**

The following table lists various topics contained in the *Procedural Safeguards Notice* and identifies what chapter in this manual provides more information about each topic.

<b>Topic</b>	<b>Chapter</b>
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2. written notice	11
3. access to educational records	11
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10. civil actions, including the time period in which to file such actions	13
11. attorney fees	13

**B. When the Procedural Safeguards Notice Is Provided**

The district will provide a *Procedural Safeguards Notice* that includes a full explanation of the special education rights afforded the ~~parent and/or adult student~~ parent/adult student only once per year, except that a copy will be given to the ~~parent and/or adult student~~ parent/adult student:

1. upon an initial referral or ~~parent and/or adult student~~ parent/adult student request for evaluation;
2. upon the first occurrence of a filing of a due process hearing or an administrative complaint;
3. when a decision is made to take a disciplinary action that constitutes a change of placement; and
4. upon request by the parent.

A *Procedural Safeguards Notice* suitable for copying can be found in the document section of this chapter.

## **Section 2. Domestic Considerations**

### **A. Parent**

#### **1. Definition**

The term “parent” means:

- a. a biological, adoptive, or foster parent of a child;
- b. a guardian (but not the state if the child is a ward of the state);
- c. an individual acting in the place of a biological or adoptive parent (including a grandparent, step parent, or other relative) with whom the child lives;
- d. an individual who is legally responsible for the child’s welfare
- e. an adult student; or
- f. a surrogate parent who has been appointed by the district.

#### **2. Determining Who Has Parental Rights**

In determining who has parental rights, individuals should be considered in the following order of priority:

- a. a biological parent ~~who retains guardianship~~; unless a Court orders a specific person to act as the parent or to make educational decisions on behalf of the child;
- b. a person who has legal documentation (guardianship, power of attorney, custody agreement) of being responsible for the student's welfare;
- c. a grandparent, stepparent, other relative, or foster parent with whom the student lives and who is acting as a parent; or
- d. a surrogate parent appointed by the district to represent the student's interests in educational decisions.

## **B. Surrogate Parent**

### **1. Definition**

A "surrogate parent" is an individual assigned by the district to assume the rights and responsibilities of a parent under the IDEA 2004 in any of the following circumstances:

- a. No parent can be identified or located for a particular student.
- b. The student is a ward of the state.
- c. The student is an unaccompanied homeless youth.

The surrogate parent has the same rights as a biological parent throughout the special educational decision-making process.

### **2. Referral for a Surrogate Parent**

Any person who is aware that a student may need a surrogate parent may make a referral for a determination to the district's special education director or an appropriate district administrator. The district will appoint a surrogate in any of the following circumstances:

- a. A parent cannot be identified.
- b. A parent cannot be found after reasonable efforts to locate the parent.
- c. The student is a ward of the state. If a state judge has appointed a surrogate to oversee the care of a student who is a ward of the state, the judge-appointed surrogate may make decisions regarding the student's education, including

special education, provided he or she meets the criteria for a district-appointed surrogate.

- d. The student is a homeless youth who is unaccompanied.

The district will make a good faith effort and maintain records of attempts to locate a parent. The district cannot appoint a surrogate parent when the biological parent is available but chooses not to participate. When a surrogate parent is needed for a student, the district will appoint a surrogate who meets the conditions set forth in item 3, below. The district will make reasonable efforts to assign a surrogate within thirty (30) calendar days after it determines that the student needs a surrogate.

### 3. Criteria for Serving as a Surrogate Parent

A surrogate parent may represent the student in all matters relating to identification, evaluation, placement, and the provision of FAPE. The surrogate parent shall:

- a. Have knowledge and skills that ensure effective representation.
- b. Have no personal or professional interest that conflicts with the interest of the student.
- c. Meet the following conditions:
  - 1) is not an employee of the SDE, the district, or any other agency that is involved in the education or care of the student;
  - 2) is not an employee of a nonpublic agency that provides educational care for the student.

Note: A person who otherwise qualifies to be a surrogate parent is not an employee of the district or agency solely because he or she is paid to serve as a surrogate parent.

In the case of a student who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents until a surrogate can be appointed that meets all the requirements.

### **C. Adult Students and the Transfer of Rights**

An “adult student” is a student who is at least eighteen (18) years of age to whom special education rights have transferred under the IDEA ~~2004~~ and Idaho Code.

- 1. Discussion of the Transfer of Rights: Not later than the student’s seventeenth (17<sup>th</sup>) birthday, the IEP team shall discuss the transfer of special education rights to the

student. Special education rights will transfer from the parent to the adult student when the student turns eighteen (18) years of age unless:

- a. the IEP team determines that the student does not have the ability to make informed decisions with respect to his or her educational program; or
  - b. a parent has obtained legal guardianship from a Court including the scope of educational matters.
2. Basis for Denial of Transfer: During the IEP meeting to discuss the transfer of rights, the IEP team will use the following as the basis for any denial of the transfer:
  - a. Evaluation data, test results, written reports, teacher observation, education records, and parent input, including whether the parent intends to seek guardianship.
  - b. Answers to the following questions:
    - 1) Is the student capable of understanding his or her rights?
    - 2) Is the student capable of exercising his or her rights?
    - 3) Is the student capable of understanding the consequences and impact of his or her decisions?
3. Following a Determination Concerning the Transfer of Rights: When the student's special education rights transfer at age eighteen (18), the parent and student will be informed that rights have transferred. The IEP shall contain a statement referring to the transfer (or not) of rights:
  - a. If the team determines that there is no relevant information about the student to prohibit the transfer of rights at age eighteen (18), the student's IEP shall contain a statement that the student has been informed that special education rights will transfer to him or her. The parent retains the right to receive notices required by the IDEA 2004.
  - b. If the IEP team determines that the student lacks the ability to provide informed consent with respect to his or her educational program, a statement will be included in the IEP indicating that the parent, or other individual if the parent is not available, will retain all special education rights after the student reaches age eighteen (18).
  - c. If rights have transferred, the district shall continue to provide notices to the parent, but nothing under the IDEA 2004 requires parent participation in the process.

4. Revoking a Transfer of Rights: There is nothing in federal or state law that prohibits the IEP team from changing its decision later, based on new information and input. Under state law, a parent can provide legal documentation of a student's incompetence *after* the student reaches age eighteen (18).

#### **D. Emancipated or Married Minors**

Idaho law does not provide for the emancipation of minors. However, minors who have been emancipated by a court of law in another state are considered an adult in Idaho. Emancipated minors should be able to provide the legal court document awarding them the power and capacity of an adult. A student under age eighteen (18) who claims to be an emancipated minor, but is unable to provide documentation should be assigned a surrogate parent by the district if a parent cannot be located.

Students under the age of eighteen (18) who are married to an adult, eighteen (18) years or older, are not emancipated minors in Idaho and do not have the power and capacity of an adult student. Instead, the spouse acts as the guardian of the student regarding legal rights and responsibilities.

#### **E. Ward of the State**

The term “ward of the state” means a child who, as determined by the state where the child resides, is a foster child, or a ward of the state *or* is in the custody of a public child welfare agency. The term does not include a foster child who has a foster parent who meets the definition of a parent in Section 2A.

#### **F. Child Custody**

##### **1. Definitions of Custody**

The following definitions of custody are used by Idaho courts in divorce proceedings:

- a. **Joint custody** means an order awarding custody of a minor child to both parents and providing that physical custody shall be shared by the parents in such a way as to assure the child frequent or continuing contact with both parents. A court may award either joint physical custody or joint legal custody, or both. If the court has declined an order awarding joint custody, the court order shall state in the decision the reason for denial of joint custody.
- b. **Joint physical custody** means awarding each of the parents significant periods of time in which a child resides with or is under the care and supervision of each of the parents. The actual amount of time with each parent is determined by the court. Generally, one of the parents is awarded primary physical custody.

- c. **Joint legal custody** means that the parents or parties are required to share the decision-making rights, responsibilities, and authority relating to the health, education, and general welfare of a child. In Idaho, parents have joint legal custody unless the rights of one or both parents have been terminated.

2. Conflicts Between Parents Who Have Joint Custody

- a. **Custody questions:** When it is known that a custody question exists that involves the relevant legal status of one or both parents of a student, the district will ask the parent(s) to furnish a copy of the pertinent court order or decree, if one exists, to clarify the question at issue. School personnel will abide by the most recent court order or decree.

When district personnel receive conflicting information about custody, they will (a) initially follow the instructions of the parent with whom the child currently resides and (b) request a certified court document to clarify the custody issue.

- b. **Conflicting instructions:** When parents who have joint legal custody give conflicting instructions, the district's obligation is to inform the parents that any action proposed or refused will be based on the needs of the student and in accordance with the IDEA 2004 requirements. Both the district and either parent have options under the IDEA 2004 to resolve disagreements, including SDE mediation and due process hearings.
- c. **Access to records:** A parent who does not have primary physical custody has the same right to access records and to participate in special education decision making as does the parent with primary physical custody, unless otherwise specifically stipulated by a court. Idaho Code states, "Notwithstanding any other provisions of law, access to records and information pertaining to a minor child including, but not limited to medical, dental, health, and school or educational records, shall not be denied to a parent because the parent is not the child's custodial parent." Another provision of the law allows the parent with primary physical custody to request in writing that a minor child's address be deleted from any record to prohibit the other parent from learning the child's address by having access to school records.
- d. **Parental disagreement of consent:** When parents, both with legal authority to make educational decisions for their child, disagree on the revocation of consent for special education and related services, one parent may revoke consent for his or her child's receipt of special education and related services at any time. The district must accept either parent's revocation of consent, and provide written notice to the parents. After revoking consent, a parent maintains the right to subsequently request an initial evaluation which must be

treated as an initial evaluation and not a re-evaluation for special education. A parent who disagrees with another parent regarding revocation of special education services is not entitled to resolve the dispute through an IDEA due process hearing.

### **Section 3. Informed Consent**

#### **A. Definition**

Consent is written approval given by a ~~parent and/or adult student~~ parent/adult student who has been fully informed of and understands all information relevant to the activity for which consent is sought. The request for consent describes the activity for which consent is sought and lists the records, if any, that will be released and to whom. All information shall be provided in the native language or mode of communication of the ~~parent and/or adult student~~ parent/adult student, unless not feasible. The ~~parent and/or adult student~~ parent/adult student shall be informed that the approval is voluntary and may be revoked at any time prior to the action. Consent is indicated by the parent's/adult student's signature.

#### **B. Actions Requiring Consent**

The following actions require the district to obtain written consent. Some of the actions that require written consent from the ~~parent and/or adult student~~ parent/adult student also require prior written notice from the district.

1. Informed written consent *and* written notice are required when:
  - a. Conducting assessments as part of an initial evaluation to determine whether a student is eligible for special education.
  - b. Conducting any assessment for reevaluation that involves more than a review of existing information. This includes any assessments that are conducted after a student has been determined eligible for special education. If a specific assessment was not listed on the *Consent for Assessment* form, then the district shall secure written consent again in order to conduct that particular assessment.
  - c. Initially providing special education and related services to a student with a disability.
2. Informed written consent only is required when:
  - a. Using an individual family service plan (IFSP) instead of an IEP for students ages three (3) through five (5).



- b. Disclosing personally identifiable information to unauthorized persons, unless provided as an exception under the Family Educational Rights and Privacy Act (FERPA) regulations. The written consent shall specify the records that may be disclosed, state the purpose of the disclosure, and identify the party to whom the disclosure will be made.
- c. Accessing private insurance to pay for services listed in the IEP.
- d. Only one time when ~~When~~ the district bills Medicaid (with some exceptions).  
The ~~parent and/or adult student~~ parent/adult student shall be informed of the frequency, amount, and type of services that the district will be submitting to Medicaid for reimbursement.
- e. Inviting outside agency representatives providing transition services to an IEP team meeting.
- f. Sharing of information between the district of location and the district of residence with a parentally placed elementary or secondary student.
- g. The excusal of an IEP team member from an IEP meeting when the meeting involves a modification or discussion of the member's area of the curriculum or related services.

### **C. When Consent Is Not Required**

The district is not required to obtain informed consent when:

- 1. A review of existing data is part of an evaluation or a reevaluation.
- 2. Tests are administered to both general and special education students in a grade or class and consent is not required for all students.
- 3. Teacher or related-service-provider observations, ongoing classroom evaluation, or criterion-referenced tests are used as assessments in determining the student's progress toward goals and benchmarks/objectives on the IEP.
- 4. Screening to determine appropriate instruction strategies for curriculum implementation.
- 5. A disclosure of personally identifiable information to persons authorized to have access under FERPA.

6. An IEP team reviews and revises a student's IEP. However, the ~~parent and/or adult student~~ parent/adult student may file a written objection if he or she disagrees with all or part of the changes to the IEP.

#### **D. Refusal to Give Consent**

At times, a ~~parent and/or adult student~~ parent/adult student may refuse to give written consent for an assessment, initial services or the release of information that the district believes is necessary to ensure FAPE during the reevaluation process.

If the parent does not provide consent for the reevaluation assessment, the district may choose not to pursue requesting SDE mediation and/or a due process hearing if the district determines through a review of existing data, that the information does not continue to support the determination of eligibility for special education services. In this case the district shall provide the parent with written notice of the proposed action to discontinue the provision of FAPE to the student based on a review of existing data.

The district may also choose to pursue the reevaluation through SDE mediation and/or by requesting a due process hearing. If the hearing officer determines that the action is necessary, and the ~~parent and/or adult student~~ parent/adult student does not appeal the decision, the district may proceed with the proposed action. The district shall provide the parent with written notice of the proposed actions.

The district shall secure written consent for the initial provision of special education and related services. There is no mechanism available to overturn a parent's/adult student's decision *not* to provide written consent for initial evaluation or initial provision of services. In the case of an initial evaluation or initial provision of services, if a ~~parent and/or adult student~~ parent/adult student fails to respond to reasonable measures to gain consent or does not consent the district cannot be charged with failing to provide FAPE to the student and is not required to convene an IEP meeting or develop an IEP for special education or related services.

#### **E. Failure to Respond to a Request for Consent Regarding Reevaluation Assessment**

When a ~~parent and/or adult student~~ parent/adult student fails to respond to reasonable measures taken by the district to obtain written consent to determine continued eligibility, the district may proceed with the evaluation. The district shall have a record of its attempts to gain consent by documenting telephone calls made or attempted, correspondence sent, or visits made to the home or place of employment. Failure to respond is not the same as refusing consent for reevaluation.

#### **F. Revoking Consent for Evaluation**

Consent previously given for an evaluation or an individual assessment, the initial provision of special education and related services, and the disclosure of information may be revoked only before the action occurs. If consent is revoked for evaluation, the district may continue to pursue the action by ~~using SDE IEP facilitation or mediation and/or~~ requesting a due process hearing

~~(this does not include the initial provision of special education and related services)~~. If the hearing officer determines that the action for which consent is sought is necessary, and the decision is not appealed, the district may proceed with the action without the written consent of the ~~parent and/or adult student~~ parent/adult student. Consent must be revoked in writing.

## **Section 4. Written Notice**

### **A. Definition**

Written notice is the act of informing a ~~parent and/or adult student~~ parent/adult student in writing within a reasonable amount of time, before the district proposes or refuses to initiate or change the student's identification, the evaluation, educational placement, or provision of FAPE.

### **B. Criteria for Written Notice**

1. Written notice must be provided in a reasonable amount of time before implementing the proposed action.
2. Written notice shall be in language understandable to the general public. It must be provided in the native language or other mode of communication normally used by the ~~parent and/or adult student~~ parent/adult student unless it is clearly not feasible to do so. If the native language or other mode of communication is not a written language, the district shall take steps to ensure the following:
  - a. The notice is translated orally or by other means in the native language or other mode of communication.
  - b. The ~~parent and/or adult student~~ parent/adult student understands the content of the notice.
  - c. There is written evidence that the notice requirements of this section have been met, such as a written record in the student's special education file documenting what was discussed.

When a ~~parent and/or adult student~~ parent/adult student disagrees with the district's written notice of a proposed or refused action, he or she can attempt to remedy the dispute using SDE processes, such as IEP facilitation, mediation, formal complaint procedures, or due process hearing procedures afforded by the IDEA 2004. In addition, the ~~parent and/or adult student~~ parent/adult student may have the right to prevent the district from taking action by filing a written objection with the district.

### **C. Written Notice Is Required**

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1. The district shall provide written notice before proposing to initiate or change the following:
  - a. identification of the student;
  - b. any assessments for initial evaluation or reevaluation;
  - c. educational placement; or
  - d. the provision of FAPE.
2. After the district's decision to refuse a parent's/~~and/or~~ adult student's request to initiate or change the identification, assessment, placement, or provision of FAPE.
3. If the district refuses to convene an IEP team meeting at the request of a ~~parent and/or adult student~~ parent/adult student.
4. When the evaluation team determines that additional assessments are not required during a reevaluation to determine whether the student continues to meet eligibility criteria, the district shall provide written notice to the ~~parent and/or adult student~~ parent/adult student of the decision and the reasons for that decision. The ~~parent and/or adult student~~ parent/adult student must also be informed of his or her right to request assessments when necessary to determine continued eligibility.
5. If a parent files a due process hearing request, the district is required to give written notice specific to the issues raised in the due process hearing request within ten (10) days.
6. If the district has determined that the student is being removed for disciplinary purposes which constitutes a change of placement.
7. If the parent/adult student revokes consent for the continued provision of special education.

**D. Written Notice is Not Required**

The district is not required to provide written notice in the following situations:

1. ~~When~~ when reviewing existing data as part of an evaluation or a reevaluation- (however, the ~~parent and/or adult student~~ parent/adult student shall be afforded the opportunity to participate in the review of existing data).;
2. ~~When~~ when tests are administered to both general and special education students in a grade or class.;

3. ~~When~~ when teacher or related service provider observations, ongoing classroom evaluation, or criterion-referenced tests are used as assessments in determining the student's progress toward goals and benchmarks/objectives on the IEP-; or
4. ~~Notice is not required~~ if outside observation is in relation to teacher's general practices.

#### **E. Content of Written Notice**

The content of written notice is intended to provide the ~~parent and/or adult student~~ parent/adult student with enough information so that he or she is able to fully understand the district's proposed action or refused action and to make informed decisions, if necessary.

The written notice shall include the following:

1. a description of the action proposed or refused by the district;
2. an explanation of why the district proposes or refuses to take the action;
3. a description of any other options the IEP team considered and the reasons why those options were rejected;
4. a description of each procedure, assessment, record, or report that the district used as a basis for the proposed or refused action;
5. a description of any other factors relevant to the proposed or refused action;
6. a statement that the ~~parent and/or adult student~~ parent/adult student has special education rights and a description of how to obtain a copy of the *Procedural Safeguards Notice*; and
7. sources to contact in obtaining assistance in understanding the *Procedural Safeguards Notice*.

#### **F. Objection to District Proposal**

If a ~~parent and/or adult student~~ parent/adult student disagrees with an IEP program change or placement change that is proposed by the IEP team ~~district~~, he or she may file a written objection to all or part of the proposed change. The district will respond as follows:

1. If the objection is postmarked or hand delivered within ten (10) calendar days of the date the ~~parent and/or adult student~~ parent/adult student received the written notice, the changes to which the ~~parent and/or adult student~~ parent/adult student objects cannot be implemented.

2. If a proposed change is being implemented during the ten (10) day period and an objection is received, the implementation of that change shall cease.
3. If an objection is made after ten (10) calendar days, the district may continue to implement the change, but the ~~parent and/or adult student~~ parent/adult student retains the right to exercise other procedures under the IDEA 2004.

The parties may resolve a disagreement using methods such as holding additional IEP team meetings, or utilizing SDE processes, such as IEP facilitation or mediation. If these attempts fail, the district may request a due process hearing regarding the proposed change. ~~Parent's and/or adult student's~~ parent's/adult student's written objection to an IEP or placement change cannot be used to prevent the district from unilaterally placing the student in an IAES in accordance with the IDEA 2004 procedures for discipline of a student.

### **Section 5. Confidentiality and Access to Records**

The district shall collect, use, and maintain information about a student to make appropriate decisions concerning special education and the provision of FAPE. A student's special education case manager, usually the special education teacher, should organize all relevant records specific to district guidelines and the IDEA 2004 requirements.

The IDEA 2004 and FERPA contain provisions to protect the confidentiality of personally identifiable information in student special education records. These statutes also provide for the right to review and inspect records.

#### **A. Definition**

A "record" is defined as personally identifiable information directly related to the student and maintained by the district or a party acting for the district. A student record can be written or electronic.

1. The term "record" may include, but is not limited to, the following:
  - a. identifying data (name, address, parents, siblings, Social Security number, list of personal characteristics making identification reasonably certain by a person in the school community ~~possible~~);
  - b. academic work completed (courses taken, transcript);
  - c. level of achievement (grades, portfolios, performance assessments, scores on standardized achievement tests, etc);
  - d. attendance data;

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- e. scores and protocols of standardized intelligence, aptitude, and psychological tests;
- f. records of teachers, counselors, medical personnel, and psychologists working directly with a student if disclosed to others;
- g. interest inventory results;
- h. observations and verified reports of serious or recurring behavior patterns;
- i. videotapes or audiotapes;
- j. health data including medical assessments;
- k. family background information;

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- l. transportation records; ~~and~~
  - m. student records maintained by agencies and individuals contracting with the district; and
  - n. email, text messages, or other written notes sent regarding the student or the student's family.
2. The term "record" does not include:
- a. records of instructional, supervisory, ancillary, and administrative personnel that are kept in the sole possession of the maker of the record and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;
  - b. records created by law enforcement units of schools and maintained separately for non-educational purposes; and
  - c. employment records about a student who is employed by a school or district.  
(Note: Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted);
  - d. records on a student who is eighteen (18) years of age or older, or is attending an institution of postsecondary education, that are:
    - 1) made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;
    - 2) made, maintained, or used only in connection with treatment of the student; and
    - 3) disclosed only to individuals providing the treatment (Note: "Treatment" does not include remediation educational activities or activities that a part of the program of instruction); and
  - e. grades on peer-graded papers before they are collected and recorded by a teacher.

**B. Protection of Records**

The district shall prevent unauthorized disclosure of personally identifiable information pertaining to students with disabilities. "Disclosure" is the release, transfer, or other communication of education records or of personally identifiable information contained in those



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records to any party, by any means, including oral, written, or electronic. Districts must have a policy to protect personally identifiable information from security risk resulting from unsecured data transmittal or storage.

To ensure protection of records, the district shall do the following:

1. Obtain written and dated consent from the ~~parent and/or adult student~~ parent/adult student before disclosing personally identifiable information:

- a. to unauthorized individuals; or
- b. for any purpose except as ~~required~~ authorized by the IDEA 2004, Part B by law.

~~In the event that a parent and/or adult student parent/adult student refuses consent for disclosure, SDE mediation may be offered as a voluntary way of resolving the disagreement.~~

2. Designate and train a records manager to assure security of confidential records for students with disabilities.
3. Maintain a log of requests for access to education records if the disclosure is not to:
  - a. a ~~parent and/or adult student~~ parent/adult student;
  - b. a school employee with a legitimate educational interest;
  - c. a party seeking designated directory information; or
  - d. a party receiving the records as directed by a federal jury or other subpoena ordering no one to disclose the existence of the request to access records.

This log includes the name, agency affiliation, date, and purpose for accessing the records. A log documenting denials for records and partially fulfilled requests should also be maintained.

4. Maintain, for public inspection, a current listing of names and positions of employees who have access to personally identifiable information.
5. Establish procedures to ensure the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
6. Ensure that, if any education record includes information on more than one student, a ~~parent and/or adult student~~ parent/adult student will only be allowed to inspect, review, or be informed about the record of the student at issue.

7. Ensure that each person collecting or using personally identifiable information receives training or instruction regarding the policies and procedures governing confidentiality. All staff members, even those who do not have access to special education records, should be informed about what is considered appropriate and inappropriate access to and use of information within the records. The district may maintain a record of the training provided—including the name of the person or persons providing the training, dates of the training, those attending, and the subjects covered—for the purpose of documenting that new staff members have been trained as soon as possible after they have been hired.

In the event that a parent/adult student refuses consent for disclosure, SDE mediation may be offered as a voluntary way of resolving the disagreement.

### **C. Access to Records**

The district shall:

1. Annually notify the parents of all students, including students with disabilities currently in attendance, of their rights under FERPA. The notice shall include all of the following:
  - a. procedures for exercising the right to inspect and review education records;
  - b. procedures for requesting amendment of records; and
  - c. a specification of criteria for determining who constitutes a school official or employee in the district and what constitutes a legitimate educational interest.
2. Permit a ~~parent and/or adult student~~ parent/adult student, or his or her representative, to inspect and review any record relating to educational matters that is collected, maintained, or used by the district. The district will presume that a custodial or non-custodial parent has the authority to inspect and review a record relating to his or her child unless there are legal documents limiting access to those records under state law. A minor student's address will be deleted from any record if requested in writing by a custodial parent to prohibit a non-custodial parent from learning the address simply by having access to the school records.

The district will make records available to a ~~parent and/or adult student~~ parent/adult student for review:

- a. without delay but no later than forty-five (45) days after the request;
- b. before any meeting regarding an IEP;

- c. before a resolution session; and
- d. not less than five (5) business days before any due process hearing.

The district should note that test protocols may be part of a student's educational record. Test publishers require districts to maintain the integrity and validity of tests. Parents or others authorized by the parent/adult student interested in a student's test results are allowed to view the student's responses to test items, but only if the information is shared in the presence of a person qualified to explain the results and meaning of the various items and data contained in the protocol.

- 3. Upon request, provide a ~~parent and/or adult student~~ parent/adult student with a list of the types of education records the school collects, maintains, or uses and where they are kept.
- 4. Respond to any reasonable request made by a ~~parent and/or adult student~~ parent/adult student for an explanation and interpretation of a record.
- 5. Provide a copy of education records if a ~~parent and/or adult student~~ parent/adult student would otherwise be unable to effectively exercise his or her right to inspect and review those records. An education record may include copyrighted test protocols which include personally identifiable information, ~~in which case, the parent shall be allowed to inspect and review on premises. Even though it is important that standardized test items are protected from general release so that tests remain usable and valid, FERPA and the IDEA 2004 allow copies in these unique situations.~~ A fee may be charged for the copies, but not to search for or retrieve information. The district shall ~~will~~ publish a schedule of fees it intends to charge.
- 6. Always provide a ~~parent and/or adult student~~ parent/adult student a copy of the IEP and any documentation of identification and eligibility.

#### **D. Disclosures Not Requiring Consent**

Consent is generally required to disclose personally identifiable information to others. However, consent is not required when:

- 1. A school official or employee has a legitimate educational interest to access the records.
- 2. A representative of the Federal Comptroller General, the United States Department of Education, or the State Department of Education (SDE) accesses records necessary for an audit or evaluation of a federal program or for enforcement or compliance with federal regulations.

3. A student transfers to another school or school system in which the student intends to enroll unless a district has adopted a procedure requiring consent. However, the ~~parent and/or adult student~~ parent/adult student should be notified of the request for records at the last known address of the ~~parent and/or adult student~~ parent/adult student unless he or she initiated the request.
4. The health and safety of the student or other individuals is in jeopardy because of an emergency.
5. The disclosure concerns the juvenile justice system's ability to effectively serve the student or the ability to respond to court orders or subpoenas, as specified in state law. The district will make a reasonable effort to notify the parent of the court order in advance of compliance, unless the subpoena specifically states that it is not to be disclosed.
6. An organization conducts studies on behalf of education agencies or institutions under specified FERPA criteria.
7. The disclosure is in connection with an application for financial aid and is necessary to determine eligibility for the aid, the amount of the aid, conditions for the aid, or to enforce the terms and conditions of the aid ("financial aid" means a payment of funds to an individual that is conditioned on the individual's attendance at an education agency or institution).
8. The district has designated information as "directory information" under the conditions in FERPA.

#### **E. Destruction of Records**

The district will maintain education records, including eligibility documentation and IEPs, for at least five (5) years after disenrollment from the district to demonstrate fiscal accountability and program compliance with the IDEA 2004 requirements. The district shall inform a parent and/or adult student when personally identifiable information collected, maintained, or used is to be destroyed because the information is no longer needed to provide educational services to the student.

~~The parent and/or adult student must be informed of the personally identifiable information that the district intends to destroy and that the information will be destroyed no earlier than forty five (45) calendar days from the date of the notice. The parent and/or adult student must also be informed of the procedure to follow if he or she wishes to formally object to the destruction of the information and wants the records sent to him or her.~~

Electronic copies will be treated as the original so long as those copies adequately capture any handwritten notes and signatures. Test Protocols and other assessment information shall be maintained during the period in which the report which utilizes such information is in effect.

Note: Medicaid-related records, specifically expenditure documentation, cost allocation process, all student records related to the Medicaid billing and service delivery (e.g., data sheets, IEPs, health care plans, physician recommendations for assessments and IEP services, evaluation recommendations, documented supervision of paraprofessionals), and revenue documentation, must be kept for a period of six (6) years.

The district must maintain the records for a minimum of five (5) years, unless Medicaid billing occurred, in which case the records must be maintained for six (6) years from the date the student was last enrolled in the district.

~~The parent and/or adult student~~ parent/adult student must be informed of the personally identifiable information that the district intends to destroy and that the information will be destroyed no earlier than forty-five (45) calendar days from the date of the notice. ~~The parent and/or adult student~~ parent/adult student must also be informed of the procedure to follow if he or she wishes to formally object to the destruction of the information and wants the records sent to him or her.

Written and electronic records of individual students are confidential. The district will ensure the complete destruction of the records which may include but is not limited to: shredding, permanently deleting, shall be shredded or burned burning under supervision of the staff member responsible for the records if not released to the ~~parent and/or adult student~~ parent/adult student. The records manager should maintain a log that documents the date of destruction or release of records.

A permanent record of the student's name, address, phone number, grades, classes attended, immunization records, test scores, attendance record, grade level, and year completed may be maintained by the district without a time limitation. ~~Any other personally identifiable information shall be destroyed at the request of the parent and/or adult student if it is older than five (5) years and no longer needed to provide special education.~~ Any other personally identifiable information shall be destroyed at the request of the parent(s/adult former student. When informing the ~~parent and/or adult student~~ parent/adult student of his or her rights, the district should remind the ~~parent and/or adult student~~ parent/adult student that the records might be needed for Social Security benefits or other purposes in the future.

## **F. Request for Amendment of Records**

A ~~parent and/or adult student~~ parent/adult student may request that the district amend the student's records if he or she believes that information collected, maintained, or used in the education record is inaccurate, misleading, or in violation of the privacy or other rights of the student. The district will use the following procedure:

1. The district, within a reasonable period of time—not to exceed forty-five (45) days of receipt of the request—must decide whether to amend the record. If the district refuses to amend the record, the ~~parent and/or adult student~~ parent/adult student must

be informed of the refusal and be advised of the right to and procedure for requesting a district hearing under the district's FERPA policy. A district hearing is an informal hearing that does not have all the requirements of a due process hearing.

2. If a district hearing is requested and the district decides that the information is inaccurate, misleading, or in violation of the student's rights, the district shall amend the record and inform the ~~parent and/or adult student~~ parent/adult student in writing.
3. If a district hearing is requested and the district decides the information is accurate and does not violate the student's rights, the district shall inform the ~~parent and/or adult student~~ parent/adult student that he or she may place a statement in the record. This statement may comment on the information in the record or set forth the parent's/adult student's reasons for disagreeing with the district. Any statement placed with a record must accompany the record for as long as the district maintains the record. If the district discloses the record to any person, the district shall also disclose the statement.

#### **G. District Hearings on Procedures for Records**

Each district is required to have a FERPA policy which includes the rights to request a hearing challenging the accuracy of records.

~~If a parent and/or adult student~~ parent/adult student requests a district hearing on a proposed amendment of education records, the district will follow these procedures:

- ~~1. The district hearing will be held within a reasonable amount of time after receiving the request. The district will give the parent and/or adult student~~ parent/adult student ~~notice of the date, time, and place reasonably in advance of the hearing.~~
- ~~2. The district's hearing will be conducted by an employee of the district or other individual who does not have a direct interest in the outcome of the hearing. The district will give the parent and/or adult student~~ parent/adult student ~~a full and fair opportunity to present evidence relevant to the issues raised. The parent and/or adult student~~ parent/adult student ~~may, at his or her own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney.~~
- ~~3. The district will make its decision in writing within a reasonable period of time after the hearing. The decision shall be based solely on the evidence presented at the district's hearing and shall include a summary of the evidence and the reasons for the decision.~~

#### **H. Students' Rights**

When special education rights transfer to a student under the IDEA 2004 and Idaho Code, the FERPA rights regarding education records also transfer to the student. The district shall inform the ~~adult student and the parent~~ parent/adult student that both the IDEA 2004 and FERPA rights

regarding education records transfer although FERPA gives the parent of a student who is claimed to be a dependent for IRS purposes the right to request access without the consent of the student.

## **Section 6. Independent Educational Evaluations**

### **A. Definition**

An independent educational evaluation (IEE) means one or more individual assessments, each completed by a qualified examiner who is not employed by the district responsible for the education of the student in question.

### **B. Right to an IEE**

1. A ~~parent and/or adult student~~ parent/adult student has the right to obtain an IEE at public expense if he or she disagrees with an evaluation obtained or conducted by the district. The ~~parent and/or adult student~~ parent/adult student is entitled to only one IEE at public expense for each district evaluation.
2. The ~~parent and/or adult student~~ parent/adult student has the right to an IEE at his or her own expense at any time, and the IEP team shall consider the results.
3. The ~~parent and/or adult student~~ parent/adult student is not automatically entitled to have additional assessments beyond those determined necessary for an evaluation. However, if the ~~parent and/or adult student~~ parent/adult student is interested in additional or different assessments and the district refuses to provide them and provides written notice of refusal. The parent/adult student may exercise his or her procedural safeguards to challenge this decision, he or she may pursue additional assessments through a due process hearing request. In addition, the
4. ~~A district may initiate a due process hearing, without undue delay, to determine if the evaluation it conducted is appropriate. If the final decision of a hearing officer, or a court of law's decision on an appeal, is that the evaluation conducted by the district was appropriate, the parent and/or adult student still has the right to an IEE but at his or her own expense.~~
4. A hearing officer may order an IEE at public expense if he or she determines that the evaluation conducted by the district was not appropriate.

### **C. Procedures for Requesting an IEE**

If a ~~parent and/or adult student~~ parent/adult student requests an IEE at public expense, the district may ask why he or she disagrees with the evaluation obtained by the district, but the district cannot require an explanation. The district shall give the ~~parent and/or adult student~~ parent/adult

student the criteria under which an IEE can be obtained. The district's IEE criteria shall include the following information:

1. the location for the evaluation;
2. the required qualifications of the examiner;
3. the eligibility requirements for the specific disability categories; and
4. reasonable cost containment criteria applicable to personnel for specified assessments to eliminate unreasonably excessive fees.

Except for the criteria listed above, the district may not impose other conditions or timelines if doing so would be inconsistent with the parent's/adult student's ~~and/or adult student's~~ right to an IEE. Upon request, a list of qualified examiners who can conduct an IEE will be provided.

A ~~parent and/or adult student~~ parent/adult student may request an opportunity to demonstrate that unique circumstances justify an IEE that does not fall within the district's cost criteria. If an IEE that falls outside the district's cost criteria is justified, that IEE will be publicly funded.

#### **D. District Responsibilities Following IEE Requests**

1. If a ~~parent and/or adult student~~ parent/adult student requests an IEE at public expense, the district shall do one of the following without unnecessary delay:
  - a. Provide the district's IEE criteria and information about where an IEE may be obtained.
  - b. ~~Offer SDE mediation to try to resolve differences.~~ c. Request a due process hearing to show that the district's evaluation is appropriate. If the final hearing decision is that the district's evaluation is appropriate, the ~~parent and/or adult student~~ parent/adult student may pursue an IEE, but at his or her own expense.
2. If a ~~parent and/or adult student~~ parent/adult student asks the district to pay for an IEE that has already been obtained, the district shall pay for the IEE if it meets the criteria for publicly funded IEEs. If the district believes that its evaluation was appropriate, but agrees to pay for the IEE, the district should state this in writing within the same document in which it agrees to pay. The district can also request SDE mediation.

#### **E. Consideration of the IEE Results**

If a ~~parent and/or adult student~~ parent/adult student obtains an IEE and makes that evaluation available to the district, the results must be considered by the district in any decision made with respect to the provision of FAPE. The results may also be presented as evidence at a hearing



**STATE DEPARTMENT OF EDUCATION  
DECEMBER 18, 2014**

regarding the student. This is true regardless of whether the IEE is at the expense of the ~~parent and/or adult student~~ parent/adult student or district.

The results of an IEE cannot be the sole determining factor for eligibility. The evaluation team has the responsibility to use existing evaluation data in addition to the IEE to determine whether a student has or continues to have a disability under the IDEA 2004.

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**Documents**

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**STATE DEPARTMENT OF EDUCATION  
DECEMBER 18, 2014**

**Application for Surrogate Parent** you willing to serve as a surrogate parent for at least one full academic year? .....

**Parent**

Please list your experiences with children or you such as parenting, organizations, etc.

The District shall ensure that the rights of a student are protected when: no parent can be identified; the District, after reasonable efforts, cannot locate a parent; the child is a ward of the State under the laws of Idaho; or the child is an unaccompanied homeless youth. The duties of District include the assignment of an individual to act as a surrogate for the parents. This shall include a method for determining whether a student needs a surrogate parent and for assigning a surrogate parent to the student no later than thirty (30) calendar days after the request. The District shall ensure that a person selected as a surrogate parent is not an employee of the State Department of Education, the District, or any other agency that is involved in the education or care of the student; has no personal or professional interest that conflicts with the interest of the student the surrogate parent represents; and has knowledge and skills that ensure adequate representation of the student. A person otherwise qualified to be a surrogate parent is not an employee of the District solely because he or she is paid by the District to serve as a surrogate parent.

Please list your previous training or experience with special education processes.

Please list your previous experiences as a surrogate parent.

Please list any preferences or exceptions regarding the student's school location or disability.

Please list three references we may contact:

1. Name: \_\_\_\_\_ Address: \_\_\_\_\_  
 2. Name: \_\_\_\_\_ Address: \_\_\_\_\_  
 3. Name: \_\_\_\_\_ Address: \_\_\_\_\_  
 4. Name: \_\_\_\_\_ Address: \_\_\_\_\_  
 5. Name: \_\_\_\_\_ Address: \_\_\_\_\_

Email address: \_\_\_\_\_  
 Email address: \_\_\_\_\_  
 Email address: \_\_\_\_\_  
 Email address: \_\_\_\_\_  
 Email address: \_\_\_\_\_

**For District Use Only**

Documentation of reference checks:

Please return this form to the District office at:

\_\_\_\_\_  
 \_\_\_\_\_

Date trained as a surrogate parent:

Your Name: \_\_\_\_\_ Date: \_\_\_\_\_

Home Address: \_\_\_\_\_

Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_

Email address: \_\_\_\_\_ Appointment \_\_\_\_\_ Student \_\_\_\_\_ School \_\_\_\_\_ Date Appointed \_\_\_\_\_

**History**

Do you have children in your care who are foster children or children with disabilities? ..... [ ] Yes [ ] No

If yes, please describe:


Are you conversant in any languages other than English? ..... [ ] Yes [ ] No

If yes, what languages other than English?

Are you able to attend meetings during the school or work day? ..... [ ] Yes [ ] No

Do you have sufficient time to devote as a surrogate parent? ..... [ ] Yes [ ] No

## Part B PROCEDURAL SAFEGUARDS NOTICE

Revised June 2009  
December 2015

The Individuals with Disabilities Education Act (IDEA), the Federal law concerning the education of students with disabilities, requires schools to provide you, the parents of a child with a disability, with a notice containing a full explanation of the procedural safeguards available under IDEA and U.S. Department of Education regulations. A copy of this notice must be given to you only one time a school year, except that a copy must also be given to you: (1) upon initial referral or your request for evaluation; (2) upon receipt of your first State complaint under 34 CFR §§300.151 through 300.153 and upon

**DisAbility Rights Idaho**

**Boise Office:**

4477 Emerald Street, Suite B-100  
Boise, ID 83706-2066  
208-336-5353

**Idaho Parents Unlimited, Inc. (IPUL)**

500 South 8<sup>th</sup> Street  
1878 W Overland  
Boise, ID 83705  
800/242-IPUL (4785)  
V/TT: 208/342-5884

receipt of your first due process complaint under §300.507 in a school year; (3) when a decision is made to take a disciplinary action against your child that constitutes a change of placement; and (4) upon your request. [34 CFR §300.504(a)]

Your school district can provide more information on these rights. If you have questions, you should speak to the special education teacher, school principal, director of special education, or superintendent in the district.

**For further explanation on any of these rights you may also contact:**

208-336-5396 (fax)  
800-632-5125 (toll-free)

**Pocatello Office:**

1246 Yellowstone Avenue, Suite A-3  
Pocatello, ID 83201-4374

Web: [ipulidaho.org](http://ipulidaho.org)

Idaho State Department of Education  
~~Division of Student Achievement and School Improvement~~  
P.O. Box 83720  
Boise, Idaho 83720-0027  
(208) 332-6910  
TT: 800-377-3529

~~Idaho Parents Unlimited, Inc. (IPUL)~~  
~~1878 W Overland~~  
~~Boise, Idaho 83705~~  
~~800-242-4785~~  
~~V/TT: (208) 342-5884~~

DisAbility Rights Idaho  
(formerly Comprehensive Advocacy, Inc. (Co-Ad))  
4477 Emerald St., Suite B-100  
Boise, Idaho 83706  
866-262-3462  
V/TT: 800-632-5125  
V/TT: (208) 336-5353

208-232-0922  
208-232-0938 (fax)  
866-309-1589 (toll-free)

Web: [disabilityrightsidaho.org](http://disabilityrightsidaho.org)

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## GENERAL INFORMATION

### PRIOR WRITTEN NOTICE

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#### 34 CFR §300.503

##### Notice

Your school district must give you written notice (provide you certain information in writing), within a reasonable amount of time before it:

1. Proposes to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of a free appropriate public education (FAPE) to your child; or
2. Refuses to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of FAPE to your child.

##### Content of notice

The written notice must:

1. Describe the action that your school district proposes or refuses to take;
2. Explain why your school district is proposing or refusing to take the action;
3. Describe each evaluation procedure, assessment, record, or report your school district used in deciding to propose or refuse the action;
4. Include a statement that you have protections under the procedural safeguards provisions in Part B of IDEA;
5. Tell you how you can obtain a description of the procedural safeguards if the action that your school district is proposing or refusing is not an initial referral for evaluation;
6. Include resources for you to contact for help in understanding Part B of IDEA;
7. Describe any other options that your child's individualized education program (IEP) Team considered and the reasons why those options were rejected; and
8. Provide a description of other reasons why your school district proposed or refused the action.

##### Notice in understandable language

The notice must be:

1. Written in language understandable to the general public; and
2. Provided in your native language or other mode of communication you use, unless it is clearly not feasible to do so.



If your native language or other mode of communication is not a written language, your school district must ensure that:

1. The notice is translated for you orally or by other means in your native language or other mode of communication;
2. You understand the content of the notice; **and**
3. There is written evidence that the requirements in paragraphs 1 and 2 have been met.

## NATIVE LANGUAGE

---

### 34 CFR §300.29

*Native language*, when used regarding an individual who has limited English proficiency, means the following:

1. The language normally used by that person, or, in the case of a child, the language normally used by the child's parents;
2. In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.

For a person with deafness or blindness, or for a person with no written language, the mode of communication is what the person normally uses (such as sign language, Braille, or oral communication).

## ELECTRONIC MAIL

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### 34 CFR §300.505

If your school district offers parents the choice of receiving documents by e-mail, you may choose to receive the following by e-mail:

1. Prior written notice;
2. Procedural safeguards notice; **and**
3. Notices related to a due process complaint.

## PARENTAL CONSENT - DEFINITION

---

### 34 CFR §300.9

#### Consent

*Consent* means:

1. You have been fully informed in your native language or other mode of communication (such as sign language, Braille, or oral communication) of all information about the action for which you are giving consent.
2. You understand and agree in writing to that action, and the consent describes that action and lists the records (if any) that will be released and to whom; **and**
3. You understand that the consent is voluntary on your part and that you may withdraw your consent at any time.

If you wish to revoke (cancel) your consent after your child has begun receiving special education and related services, you must do so in writing. Your withdrawal of consent does not negate (undo) an action that has occurred after you gave your consent but before you withdrew it. In addition, the school district is not required to amend (change) your child's education records to remove any references that your child received special education and related services after your withdrawal of consent.

## PARENTAL CONSENT

---

### 34 CFR §300.300

#### Consent for initial evaluation

Your school district cannot conduct an initial evaluation of your child to determine whether your child is eligible under Part B of IDEA to receive special education and related services without first providing you with prior written notice of the proposed action and obtaining your consent as described under the headings ***Prior Written Notice*** and ***Parental Consent***.

Your school district must make reasonable efforts to obtain your informed consent for an initial evaluation to decide whether your child is a child with a disability.

Your consent for initial evaluation does not mean that you have also given your consent for the school district to start providing special education and related services to your child.

Your school district may not use your refusal to consent to one service or activity related to the initial evaluation as a basis for denying you or your child any other service, benefit, or activity, unless another Part B requirement requires the school district to do so.

If your child is enrolled in public school or you are seeking to enroll your child in a public school and you have refused to provide consent or failed to respond to a request to

provide consent for an initial evaluation, your school district may, but is not required to, seek to conduct an initial evaluation of your child by using the IDEA's mediation or due process complaint, resolution meeting, and impartial due process hearing procedures. Your school district will not violate its obligations to locate, identify and evaluate your child if it does not pursue an evaluation of your child in these circumstances.

### **Special rules for initial evaluation of wards of the State**

If a child is a ward of the State and is not living with his or her parent —

The school district does not need consent from the parent for an initial evaluation to determine if the child is a child with a disability if:

1. Despite reasonable efforts to do so, the school district cannot find the child's parent;
2. The rights of the parents have been terminated in accordance with State law; **or**
3. A judge has assigned the right to make educational decisions to an individual other than the parent and that individual has provided consent for an initial evaluation.

*Ward of the State*, as used in IDEA, means a child who, as determined by the State where the child lives, is:

1. A foster child;
2. Considered a ward of the State under State law; **or**
3. In the custody of a public child welfare agency.

There is one exception that you should know about. *Ward of the State* does not include a foster child who has a foster parent who meets the definition of a *parent* as used in IDEA.

### **Parental consent for services**

Your school district must obtain your informed consent before providing special education and related services to your child for the first time.

The school district must make reasonable efforts to obtain your informed consent before providing special education and related services to your child for the first time.

If you do not respond to a request to provide your consent for your child to receive special education and related services for the first time, or if you refuse to give such consent or later revoke (cancel) your consent in writing, your school district may not use the procedural safeguards (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) in order to obtain agreement or a ruling that the special education and related services (recommended by your child's IEP Team) may be provided to your child without your consent.

If you refuse to give your consent for your child to receive special education and related services for the first time, or if you do not respond to a request to provide such consent or later revoke (cancel) your consent in writing and the school district does not provide your child with the special education and related services for which it sought your consent, your school district:

1. Is not in violation of the requirement to make a free appropriate public education (FAPE) available to your child for its failure to provide those services to your child; **and**
2. Is not required to have an individualized education program (IEP) meeting or develop an IEP for your child for the special education and related services for which your consent was requested.

If you revoke (cancel) your consent in writing at any point after your child is first provided special education and related services, then the school district may not continue to provide such services, but must provide you with prior written notice, as described under the heading **Prior Written Notice**, before discontinuing those services.

#### Parent's Right to Object

Once you consent to the initial start of services, the school district is not required to obtain your consent to make changes to the IEP. However, if you do not want the school district to implement the changes to the IEP, you must submit your objections in writing. Your written objections must either be postmarked or hand-delivered to the school district within 10 days of receiving the written notice of the changes.

IDAPA 8.02.03.109.05a

#### Parental consent for reevaluations

Your school district must obtain your informed consent before it reevaluates your child, unless your school district can demonstrate that:

1. It took reasonable steps to obtain your consent for your child's reevaluation; **and**
2. You did not respond.

If you refuse to consent to your child's reevaluation, the school district may, but is not required to, pursue your child's reevaluation by using the mediation, due process complaint, resolution meeting, and impartial due process hearing procedures to seek to override your refusal to consent to your child's reevaluation. As with initial evaluations, your school district does not violate its obligations under Part B of IDEA if it declines to pursue the reevaluation in this manner.

#### Documentation of reasonable efforts to obtain parental consent

Your school must maintain documentation of reasonable efforts to obtain your consent for initial evaluations, to provide special education and related services for the first time, for a reevaluation, and to locate parents of wards of the State for initial evaluations. The documentation must include a record of the school district's attempts in these areas, such as:

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of correspondence sent to you and any responses received; **and**
3. Detailed records of visits made to your home or place of employment and the results of those visits.

### Other consent requirements

Your consent is not required before your school district may:

1. Review existing data as part of your child's evaluation or a reevaluation; **or**
2. Give your child a test or other evaluation that is given to all children unless, before that test or evaluation, consent is required from parents of all children.

The school district must develop and implement procedures to ensure that your refusal to consent to any of these other services and activities does not result in a failure to provide your child with a free appropriate public education (FAPE). Also, your school district may not use your refusal to consent to one of these services or activities as a basis for denying any other service, benefit, or activity, unless another Part B requirement requires the school district to do so.

If you have enrolled your child in a private school at your own expense or if you are home schooling your child, and you do not provide your consent for your child's initial evaluation or your child's reevaluation, or you fail to respond to a request to provide your consent, the school district may not use its dispute resolution procedures (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) and is not required to consider your child as eligible to receive equitable services (services made available to some parentally-placed private school children with disabilities).

## INDEPENDENT EDUCATIONAL EVALUATIONS

### 34 CFR §300.502

#### General

As described below, you have the right to obtain an independent educational evaluation (IEE) of your child if you disagree with the evaluation of your child that was obtained by your school district.

If you request an independent educational evaluation, the school district must provide you with information about where you may obtain an independent educational evaluation and about the school district's criteria that apply to independent educational evaluations.

## Definitions

*Independent educational evaluation* means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of your child.

*Public expense* means that the school district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you, consistent with the provisions of Part B of IDEA, which allow each State to use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of Part B of the Act.

## Right to evaluation at public expense

You have the right to an independent educational evaluation of your child at public expense if you disagree with an evaluation of your child obtained by your school district, subject to the following conditions:

1. If you request an independent educational evaluation of your child at public expense, your school district must, without unnecessary delay, either: (a) File a due process complaint to request a hearing to show that its evaluation of your child is appropriate; or (b) Provide an independent educational evaluation at public expense, unless the school district demonstrates in a hearing that the evaluation of your child that you obtained did not meet the school district's criteria.
2. If your school district requests a hearing and the final decision is that your school district's evaluation of your child is appropriate, you still have the right to an independent educational evaluation, but not at public expense.
3. If you request an independent educational evaluation of your child, the school district may ask why you object to the evaluation of your child obtained by your school district. However, your school district may not require an explanation and may not unreasonably delay either providing the independent educational evaluation of your child at public expense or filing a due process complaint to request a due process hearing to defend the school district's evaluation of your child.

You are entitled to only one independent educational evaluation of your child at public expense each time your school district conducts an evaluation of your child with which you disagree.

## Parent-initiated evaluations

If you obtain an independent educational evaluation of your child at public expense or you share with the school district an evaluation of your child that you obtained at private expense:

1. Your school district must consider the results of the evaluation of your child, if it meets the school district's criteria for independent educational evaluations, in any decision made with respect to the provision of a free appropriate public education (FAPE) to your child; and

2. You or your school district may present the evaluation as evidence at a due process hearing regarding your child.

**Requests for evaluations by hearing officers**

If a hearing officer requests an independent educational evaluation of your child as part of a due process hearing, the cost of the evaluation must be at public expense.

**School district criteria**

If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the school district uses when it initiates an evaluation (to the extent those criteria are consistent with your right to an independent educational evaluation).

Except for the criteria described above, a school district may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

## CONFIDENTIALITY OF INFORMATION

### DEFINITIONS

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#### 34 CFR §300.611

As used under the heading **Confidentiality of Information**:

*Destruction* means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

*Education records* means the type of records covered under the definition of “education records” in 34 CFR Part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).

*Participating agency* means any school district, agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of IDEA.

### PERSONALLY IDENTIFIABLE

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#### 34 CFR §300.32

*Personally identifiable* means information that includes:

- (a) Your child's name, your name as the parent, or the name of another family member;
- (b) Your child's address;
- (c) A personal identifier, such as your child's social security number or student number; or
- (d) A list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty.

### NOTICE TO PARENTS

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#### 34 CFR §300.612

The State Educational Agency must give notice that is adequate to fully inform parents about confidentiality of personally identifiable information, including:

1. A description of the extent to which the notice is given in the native languages of the various population groups in the State;
2. A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use



in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

3. A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; **and**
4. A description of all of the rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations in 34 CFR Part 99.

Before any major activity to identify, locate, or evaluate children in need of special education and related services (also known as “child find”), the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of these activities.

## ACCESS RIGHTS

### 34 CFR §300.613

The participating agency must permit you to inspect and review any education records relating to your child that are collected, maintained, or used by your school district under Part B of IDEA. The participating agency must comply with your request to inspect and review any education records on your child without unnecessary delay and before any meeting regarding an individualized education program (IEP), or any impartial due process hearing (including a resolution meeting or a hearing regarding discipline), and in no case more than 45 calendar days after you have made a request.

Your right to inspect and review education records includes:

1. Your right to a response from the participating agency to your reasonable requests for explanations and interpretations of the records;
2. Your right to request that the participating agency provide copies of the records if you cannot effectively inspect and review the records unless you receive those copies; **and**
3. Your right to have your representative inspect and review the records.

The participating agency may presume that you have authority to inspect and review records relating to your child unless advised that you do not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

## **RECORD OF ACCESS**

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### **34 CFR §300.614**

Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of IDEA (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

## **RECORDS ON MORE THAN ONE CHILD**

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### **34 CFR §300.615**

If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

## **LIST OF TYPES AND LOCATIONS OF INFORMATION**

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### **34 CFR §300.616**

On request, each participating agency must provide you with a list of the types and locations of education records collected, maintained, or used by the agency.

## **FEES**

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### **34 CFR §300.617**

Each participating agency may charge a fee for copies of records that are made for you under Part B of IDEA, if the fee does not effectively prevent you from exercising your right to inspect and review those records.

A participating agency may not charge a fee to search for or to retrieve information under Part B of IDEA.

## **AMENDMENT OF RECORDS AT PARENT'S REQUEST**

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### **34 CFR §300.618**

If you believe that information in the education records regarding your child collected, maintained, or used under Part B of IDEA is inaccurate, misleading, or violates the privacy or other rights of your child, you may request the participating agency that maintains the information to change the information.

The participating agency must decide whether to change the information in accordance with your request within a reasonable period of time of receipt of your request.

If the participating agency refuses to change the information in accordance with your request, it must inform you of the refusal and advise you of your right to a hearing as described under the heading ***Opportunity For a Hearing***.

## OPPORTUNITY FOR A HEARING

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### 34 CFR §300.619

The participating agency must, on request, provide you an opportunity for a hearing to challenge information in education records regarding your child to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child.

## HEARING PROCEDURES

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### 34 CFR §300.621

A hearing to challenge information in education records must be conducted according to the procedures for such hearings under the Family Educational Rights and Privacy Act (FERPA).

## RESULT OF HEARING

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### 34 CFR §300.620

If, as a result of the hearing, the participating agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of your child, it must change the information accordingly and inform you in writing.

If, as a result of the hearing, the participating agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, it must inform you of your right to place in the records that it maintains on your child a statement commenting on the information or providing any reasons you disagree with the decision of the participating agency.

Such an explanation placed in the records of your child must:

1. Be maintained by the participating agency as part of the records of your child as long as the record or contested portion is maintained by the participating agency; **and**
2. If the participating agency discloses the records of your child or the challenged information to any party, the explanation must also be disclosed to that party.

## CONSENT FOR DISCLOSURE OF PERSONALLY IDENTIFIABLE INFORMATION

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### 34 CFR §300.622

Unless the information is contained in education records, and the disclosure is authorized without parental consent under the Family Educational Rights and Privacy Act (FERPA), your consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies. Except under the circumstances specified below, your consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of Part B of IDEA.

Your consent, or consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.

If your child is in, or is going to go to, a private school that is not located in the same school district you reside in, your consent must be obtained before any personally identifiable information about your child is released between officials in the school district where the private school is located and officials in the school district where you reside.

## SAFEGUARDS

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### 34 CFR §300.623

Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.

All persons collecting or using personally identifiable information must receive training or instruction regarding your State's policies and procedures regarding confidentiality under Part B of IDEA and the Family Educational Rights and Privacy Act (FERPA).

Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

## DESTRUCTION OF INFORMATION

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### 34 CFR §300.624

Your school district must inform you when personally identifiable information collected, maintained, or used under Part B of IDEA is no longer needed to provide educational services to your child.

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The information must be destroyed at your request. However, a permanent record of your child's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

## STATE COMPLAINT PROCEDURES

### DIFFERENCES BETWEEN THE PROCEDURES FOR DUE PROCESS COMPLAINTS AND HEARINGS AND FOR STATE COMPLAINTS

The regulations for Part B of IDEA set forth separate procedures for State complaints and for due process complaints and hearings. As explained below, any individual or organization may file a State complaint alleging a violation of any Part B requirement by a school district, the State Educational Agency, or any other public agency. Only you or a school district may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation, or educational placement of a child with a disability, or the provision of a free appropriate public education (FAPE) to the child. While staff of the State Educational Agency generally must resolve a State complaint within a 60-calendar-day timeline, unless the timeline is properly extended, an impartial hearing officer must hear a due process complaint (if not resolved through a resolution meeting or through mediation) and issue a written decision within 45-calendar-days after the end of the resolution period, as described in this document under the heading Resolution Process, unless the hearing officer grants a specific extension of the timeline at your request or the school district's request. The State complaint and due process complaint, resolution and hearing procedures are described more fully below. The State Educational Agency must develop model forms to help you file a due process complaint and help you or other parties to file a State complaint as described under the heading **Model Forms**.

### ADOPTION OF STATE COMPLAINT PROCEDURES

#### 34 CFR §300.151

##### General

Each State Educational Agency must have written procedures for:

1. Resolving any complaint, including a complaint filed by an organization or individual from another State;
2. The filing of a complaint with the State Educational Agency;
3. Widely disseminating the State complaint procedures to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

### Remedies for denial of appropriate services

In resolving a State complaint in which the State Educational Agency has found a failure to provide appropriate services, the State Educational Agency must address:

1. The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and
2. Appropriate future provision of services for all children with disabilities.

## MINIMUM STATE COMPLAINT PROCEDURES

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### 34 CFR §300.152

#### Time limit; minimum procedures

Each State Educational Agency must include in its State complaint procedures a time limit of 60 calendar days after a complaint is filed to:

1. Carry out an independent on-site investigation, if the State Educational Agency determines that an investigation is necessary;
2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
3. Provide the school district or other public agency with the opportunity to respond to the complaint, including, at a minimum: (a) at the option of the agency, a proposal to resolve the complaint; and (b) an opportunity for a parent who has filed a complaint and the agency to agree voluntarily to engage in mediation;
4. Review all relevant information and make an independent determination as to whether the school district or other public agency is violating a requirement of Part B of IDEA; and
5. Issue a written decision to the complainant that addresses each allegation in the complaint and contains: (a) findings of fact and conclusions; and (b) the reasons for the State Educational Agency's final decision.

#### Time extension; final decision; implementation

The State Educational Agency's procedures described above also must:

1. Permit an extension of the 60 calendar-day time limit only if: (a) exceptional circumstances exist with respect to a particular State complaint; or (b) you and the school district or other public agency involved voluntarily agree to extend the time to resolve the matter through mediation or alternative means of dispute resolution, if available in the State.
2. Include procedures for effective implementation of the State Educational Agency's final decision, if needed, including: (a) technical assistance activities; (b) negotiations; and (c) corrective actions to achieve compliance.

### State complaints and due process hearings

If a written State complaint is received that is also the subject of a due process hearing as described under the heading ***Filing a Due Process Complaint***, or the State complaint contains multiple issues of which one or more are part of such a hearing, the State must set aside any part of the State complaint that is being addressed in the due process hearing until the hearing is over. Any issue in the State complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described above.

If an issue raised in a State complaint has previously been decided in a due process hearing involving the same parties (for example, you and the school district), then the due process hearing decision is binding on that issue and the State Educational Agency must inform the complainant that the decision is binding.

A complaint alleging a school district's or other public agency's failure to implement a due process hearing decision must be resolved by the State Educational Agency.

## FILING A STATE COMPLAINT

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### 34 CFR §300.153

An organization or individual may file a signed written State complaint under the procedures described above.

The State complaint must include:

1. A statement that a school district or other public agency has violated a requirement of Part B of IDEA or its implementing regulations in 34 CFR Part 300;
2. The facts on which the statement is based;
3. The signature and contact information for the party filing the complaint; and
4. If alleging violations regarding a specific child:
  - (a) The name of the child and address of the residence of the child;
  - (b) The name of the school the child is attending;
  - (c) In the case of a homeless child or youth, available contact information for the child, and the name of the school the child is attending;
  - (d) A description of the nature of the problem of the child, including facts relating to the problem; **and**
  - (e) A proposed resolution of the problem to the extent known and available to the party filing the complaint at the time the complaint is filed.

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received as described under the heading ***Adoption of State Complaint Procedures***.



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The party filing the State complaint must forward a copy of the complaint to the school district or other public agency serving the child at the same time the party files the complaint with the State Educational Agency.

## DUE PROCESS COMPLAINT PROCEDURES

### FILING A DUE PROCESS COMPLAINT

#### 34 CFR §300.507

##### General

You or the school district may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of your child, or the provision of a free appropriate public education (FAPE) to your child.

The due process complaint must allege a violation that happened not more than two years before you or the school district knew or should have known about the alleged action that forms the basis of the due process complaint.

The above timeline does not apply to you if you could not file a due process complaint within the timeline because:

1. The school district specifically misrepresented that it had resolved the issues identified in the complaint; **or**
2. The school district withheld information from you that it was required to provide you under Part B of IDEA.

##### Information for parents

The school district must inform you of any free or low-cost legal and other relevant services available in the area if you request the information, **or** if you or the school district file a due process complaint.

~~Idaho Parents Unlimited, Inc.  
1878 W Overland  
Boise, Idaho 83705  
800-242-4785  
V/TT: (208) 342-5884~~

~~DisAbility Rights Idaho  
4477 Emerald St., Suite B-100  
Boise, Idaho 83706  
866-262-3462  
V/TT: 800-632-5125  
V/TT: (208) 336-5353~~

##### **DisAbility Rights Idaho**

##### **Boise Office:**

4477 Emerald Street, Suite  
B-100  
Boise, ID 83706-2066  
208-336-5353

208-336-5396 (fax)  
800-632-5125 (toll-free)

##### **Pocatello Office:**

1246 Yellowstone Avenue,  
Suite A-3  
Pocatello, ID 83201-4374

208-232-0922

208-232-0938 (fax)  
866-309-1589 (toll-free)

*Web:disabilityrightsidaho.org*

**Idaho Parents Unlimited,  
Inc. (IPUL)**

500 South 8<sup>th</sup> Street  
1878 W Overland  
Boise, ID 83705  
800/242-IPUL (4785)  
V/TT: 208/342-5884  
Web: [ipulidaho.org](http://ipulidaho.org)

## **DUE PROCESS COMPLAINT**

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### **34 CFR §300.508**

#### **General**

In order to request a hearing, you or the school district (or your attorney or the school district's attorney) must submit a due process complaint to the other party. That complaint must contain all of the content listed below and must be kept confidential.

Whoever files the complaint must also provide the State Educational Agency with a copy of the complaint.

#### **Content of the complaint**

The due process complaint must include:

1. The name of the child;
2. The address of the child's residence;
3. The name of the child's school;
4. If the child is a homeless child or youth, the child's contact information and the name of the child's school;
5. A description of the nature of the problem of the child relating to the proposed or refused action, including facts relating to the problem; **and**
6. A proposed resolution of the problem to the extent known and available to the complaining party (you or the school district) at the time.

#### **Notice required before a hearing on a due process complaint**

You or the school district may not have a due process hearing until you or the school district (or your attorney or the school district's attorney) files a due process complaint that includes the information listed above.

#### **Sufficiency of complaint**

In order for a due process complaint to go forward, it must be considered sufficient. The due process complaint will be considered sufficient (to have met the content requirements above) unless the party receiving the due process complaint (you or the school district) notifies the hearing officer and the other party in writing, within 15 calendar days of receiving the complaint, that the receiving party believes that the due process complaint does not meet the requirements listed above.

Within five calendar days of receiving the notification that the receiving party (you or the school district) considers a due process complaint insufficient, the hearing officer must decide if the due process complaint meets the requirements listed above, and notify you and the school district in writing immediately.

### Complaint amendment

You or the school district may make changes to the complaint only if:

1. The other party approves of the changes in writing and is given the chance to resolve the due process complaint through a resolution meeting, described under the heading **Resolution Process**; or
2. By no later than five days before the due process hearing begins, the hearing officer grants permission for the changes.

If the complaining party (you or the school district) makes changes to the due process complaint, the timelines for the resolution meeting (within 15 calendar days of receiving the complaint) and the time period for resolution (within 30 calendar days of receiving the complaint) start again on the date the amended complaint is filed.

### Local educational agency (LEA) or school district response to a due process complaint

If the school district has not sent a prior written notice to you, as described under the heading **Prior Written Notice**, regarding the subject matter contained in your due process complaint, the school district must, within 10 calendar days of receiving the due process complaint, send to you a response that includes:

1. An explanation of why the school district proposed or refused to take the action raised in the due process complaint;
2. A description of other options that your child's individualized education program (IEP) Team considered and the reasons why those options were rejected;
3. A description of each evaluation procedure, assessment, record, or report the school district used as the basis for the proposed or refused action; and
4. A description of the other factors that are relevant to the school district's proposed or refused action.

Providing the information in items 1-4 above does not prevent the school district from asserting that your due process complaint was insufficient.

### Other party response to a due process complaint

Except as stated under the sub-heading immediately above, **Local educational agency (LEA) or school district response to a due process complaint**, the party receiving a due process complaint must, within 10 calendar days of receiving the complaint, send the other party a response that specifically addresses the issues in the complaint.

## MODEL FORMS

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### 34 CFR §300.509

The State Educational Agency must develop model forms to help you to file a due process complaint and to help you and other parties to file a State complaint. However, your State or the school district may not require the use of these model forms. In fact, you can use the model form or another appropriate form, so long as it contains the required information for filing a due process complaint or a State complaint.

## MEDIATION

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### 34 CFR §300.506

#### General

The school district must develop procedures that make mediation available to allow you and the school district to resolve disagreements involving any matter under Part B of IDEA, including matters arising prior to the filing of a due process complaint. Thus, mediation is available to resolve disputes under Part B of IDEA, whether or not you have filed a due process complaint to request a due process hearing as described under the heading ***Filing a Due Process Complaint***.

#### Requirements

The procedures must ensure that the mediation process:

1. Is voluntary on your part and the school district's part;
2. Is not used to deny or delay your right to a due process hearing, or to deny any other rights provided under Part B of IDEA; **and**
3. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

The school district may develop procedures that offer parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to you, with a disinterested party:

1. Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State; **and**
2. Who would explain the benefits of, and encourage the use of, the mediation process to you.

The State must keep a list of people who are qualified mediators and know the laws and regulations relating to the provision of special education and related services. The State Educational Agency must select mediators on a random, rotational, or other impartial basis.

The State is responsible for the costs of the mediation process, including the costs of meetings.

Each meeting in the mediation process must be scheduled in a timely manner and held at a place that is convenient for you and the school district.

If you and the school district resolve a dispute through the mediation process, both parties must enter into a legally binding agreement that sets forth the resolution and:

1. States that all discussions that happened during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding (court case); **and**
2. Is signed by both you and a representative of the school district who has the authority to bind the school district.

A written, signed mediation agreement is enforceable in any State court of competent jurisdiction (a court that has the authority under State law to hear this type of case) or in a district court of the United States.

Discussions that happened during the mediation process must be confidential. They cannot be used as evidence in any future due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under Part B of IDEA.

### **Impartiality of mediator**

The mediator:

1. May not be an employee of the State Educational Agency or the school district that is involved in the education or care of your child; **and**
2. Must not have a personal or professional interest which conflicts with the mediator's objectivity.

A person who otherwise qualifies as a mediator is not an employee of a school district or State agency solely because he or she is paid by the agency or school district to serve as a mediator.

## **RESOLUTION PROCESS**

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### **34 CFR §300.510**

#### **Resolution meeting**

Within 15 calendar days of receiving notice of your due process complaint, and before the due process hearing begins, the school district must convene a meeting with you and the relevant member or members of the individualized education program (IEP) Team who have specific knowledge of the facts identified in your due process complaint. The meeting:

1. Must include a representative of the school district who has decision-making authority on behalf of the school district; **and**

2. May not include an attorney of the school district unless you are accompanied by an attorney.

You and the school district determine the relevant members of the IEP Team to attend the meeting.

The purpose of the meeting is for you to discuss your due process complaint, and the facts that form the basis of the complaint, so that the school district has the opportunity to resolve the dispute.

The resolution meeting is not necessary if:

1. You and the school district agree in writing to waive the meeting; **or**
2. You and the school district agree to use the mediation process, as described under the heading **Mediation**.

### **Resolution period**

If the school district has not resolved the due process complaint to your satisfaction within 30 calendar days of the receipt of the due process complaint (during the time period for the resolution process), the due process hearing may occur.

The 45-calendar-day timeline for issuing a final due process hearing decision, as described under the heading, **Hearing Decisions**, begins at the expiration of the 30-calendar-day resolution period, with certain exceptions for adjustments made to the 30-calendar-day resolution period, as described below.

Except where you and the school district have both agreed to waive the resolution process or to use mediation, your failure to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

If after making reasonable efforts and documenting such efforts, the school district is not able to obtain your participation in the resolution meeting, the school district may, at the end of the 30-calendar-day resolution period, request that a hearing officer dismiss your due process complaint. Documentation of such efforts must include a record of the school district's attempts to arrange a mutually agreed upon time and place, such as:

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of correspondence sent to you and any responses received; and
3. Detailed records of visits made to your home or place of employment and the results of those visits.

If the school district fails to hold the resolution meeting within 15 calendar days of receiving notice of your due process complaint **or** fails to participate in the resolution meeting, you may ask a hearing officer to begin the 45-calendar-day due process hearing timeline.



### **Adjustments to the 30-calendar-day resolution period**

If you and the school district agree in writing to waive the resolution meeting, then the 45-calendar-day timeline for the due process hearing starts the next day.

After the start of mediation or the resolution meeting and before the end of the 30-calendar-day resolution period, if you and the school district agree in writing that no agreement is possible, then the 45-calendar-day timeline for the due process hearing starts the next day.

If you and the school district agree to use the mediation process but have not yet reached agreement, at the end of the 30-calendar-day resolution period the mediation process may be continued until an agreement is reached if both parties agree to the continuation in writing. However, if either you or the school district withdraws from the mediation process during this continuation period, then the 45-calendar-day timeline for the due process hearing starts the next day.

### **Written settlement agreement**

If a resolution to the dispute is reached at the resolution meeting, you and the school district must enter into a legally binding agreement that is:

1. Signed by you and a representative of the school district who has the authority to bind the school district; **and**
2. Enforceable in any State court of competent jurisdiction (a State court that has authority to hear this type of case) or in a district court of the United States or by the State Educational Agency, if your State has another mechanism or procedures that permit parties to seek enforcement of resolution agreements.

### **Agreement review period**

If you and the school district enter into an agreement as a result of a resolution meeting, either party (you or the school district) may void the agreement within 3 business days of the time that both you and the school district signed the agreement.

## HEARINGS ON DUE PROCESS COMPLAINTS

### IMPARTIAL DUE PROCESS HEARING

#### 34 CFR §300.511

##### General

Whenever a due process complaint is filed, you or the school district involved in the dispute must have an opportunity for an impartial due process hearing, as described in the ***Due Process Complaint*** and ***Resolution Process*** sections.

##### Impartial hearing officer

At a minimum, a hearing officer:

1. Must not be an employee of the State Educational Agency or the school district that is involved in the education or care of the child. However, a person is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer;
2. Must not have a personal or professional interest that conflicts with the hearing officer's objectivity in the hearing;
3. Must be knowledgeable and understand the provisions of IDEA, Federal and State regulations pertaining to IDEA, and legal interpretations of IDEA by Federal and State courts; **and**
4. Must have the knowledge and ability to conduct hearings, and to make and write decisions, consistent with appropriate, standard legal practice.

Each school district must keep a list of those persons who serve as hearing officers that includes a statement of the qualifications of each hearing officer.

##### Subject matter of due process hearing

The party (you or the school district) that requests the due process hearing may not raise issues at the due process hearing that were not addressed in the due process complaint, unless the other party agrees.

##### Timeline for requesting a hearing

You or the school district must request an impartial hearing on a due process complaint within two years of the date you or the school district knew or should have known about the issue addressed in the complaint.

### Exceptions to the timeline

The above timeline does not apply to you if you could not file a due process complaint because:

1. The school district specifically misrepresented that it had resolved the problem or issue that you are raising in your complaint; or
2. The school district withheld information from you that it was required to provide to you under Part B of IDEA.

## HEARING RIGHTS

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### 34 CFR §300.512

#### General

You have the right to represent yourself at a due process hearing (including a hearing relating to disciplinary procedures) or an appeal with a hearing to receive additional evidence, as described under the subheading, ***Appeal of decisions; impartial review***. In addition, any party to a hearing has the right to:

1. Be accompanied and advised by an attorney and/or persons with special knowledge or training regarding the problems of children with disabilities;
2. Be represented at the hearing by an attorney;
3. Present evidence and confront, cross-examine, and require the attendance of witnesses;
4. Prohibit the introduction of any evidence at the hearing that has not been disclosed to the other party at least five business days before the hearing;
5. Obtain a written, or, at your option, electronic, word-for-word record of the hearing; and
6. Obtain written, or, at your option, electronic findings of fact and decisions.

#### Additional disclosure of information

At least five business days prior to a due process hearing, you and the school district must disclose to each other all evaluations completed by that date and recommendations based on those evaluations that you or the school district intend to use at the hearing.

A hearing officer may prevent any party that fails to comply with this requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

#### Parental rights at hearings

You must be given the right to:

1. Have your child present at the hearing;

2. Open the hearing to the public; **and**
3. Have the record of the hearing, the findings of fact and decisions provided to you at no cost.

## HEARING DECISIONS

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### 34 CFR §300.513

#### Decision of the hearing officer

A hearing officer's decision on whether your child received a free appropriate public education (FAPE) must be based on evidence and arguments that directly relate to FAPE.

In matters alleging a procedural violation (such as "an incomplete IEP Team"), a hearing officer may find that your child did not receive FAPE only if the procedural violations:

1. Interfered with your child's right to a free appropriate public education (FAPE);
2. Significantly interfered with your opportunity to participate in the decision-making process regarding the provision of a free appropriate public education (FAPE) to your child; **or**
3. Caused your child to be deprived of an educational benefit.

None of the provisions described above can be interpreted to prevent a hearing officer from ordering a school district to comply with the requirements in the procedural safeguards section of the Federal regulations under Part B of IDEA (34 CFR §§300.500 through 300.536).

#### Separate request for a due process hearing

Nothing in the procedural safeguards section of the Federal regulations under Part B of IDEA (34 CFR §§300.500 through 300.536) can be interpreted to prevent you from filing a separate due process complaint on an issue separate from a due process complaint already filed.

#### Findings and decision provided to the advisory panel and general public

The State Educational Agency or the school district, (whichever was responsible for your hearing) after deleting any personally identifiable information, must:

1. Provide the findings and decisions in the due process hearing or appeal to the State special education advisory panel; **and**
2. Make those findings and decisions available to the public.

## APPEALS

### FINALITY OF DECISION; APPEAL; IMPARTIAL REVIEW

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#### 34 CFR §300.514

##### Finality of hearing decision

A decision made in a due process hearing (including a hearing relating to disciplinary procedures) is final, except that any party involved in the hearing (you or the school district) may appeal the decision by bringing a civil action, as described under the heading ***Civil Actions, Including the Time Period in Which to File Those Actions***.

### TIMELINES AND CONVENIENCE OF HEARINGS AND REVIEWS

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#### 34 CFR §300.515

The State Educational Agency must ensure that not later than 45 calendar days after the expiration of the 30-calendar-day period for resolution meetings or, as described under the sub-heading ***Adjustments to the 30-calendar-day resolution period***, not later than 45 calendar days after the expiration of the adjusted time period:

1. A final decision is reached in the hearing; and
2. A copy of the decision is mailed to each of the parties.

A hearing officer may grant specific extensions of time beyond the 45-calendar-day time period described above at the request of either party (you or the school district).

Each hearing must be conducted at a time and place that is reasonably convenient to you and your child.

### CIVIL ACTIONS, INCLUDING THE TIME PERIOD IN WHICH TO FILE THOSE ACTIONS

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#### 34 CFR §300.516

##### General

Any party (you or the school district) who does not agree with the findings and decision in the due process hearing (including a hearing relating to disciplinary procedures) has the right to bring a civil action with respect to the matter that was the subject of the due process hearing. The action may be brought in a State court of competent jurisdiction (a State court that has authority to hear this type of case) or in a district court of the United States without regard to the amount in dispute.

### Time limitation

The party (you or the school district) bringing the action shall have 42 calendar days from the date of the decision of the hearing officer to file a civil action.

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### Additional procedures

In any civil action, the court:

1. Receives the records of the administrative proceedings;
2. Hears additional evidence at your request or at the school district's request; **and**
3. Bases its decision on the preponderance of the evidence and grants the relief that the court determines to be appropriate.

Under appropriate circumstances, judicial relief may include reimbursement of private school tuition and compensatory education services.

### Jurisdiction of district courts

The district courts of the United States have authority to rule on actions brought under Part B of IDEA without regard to the amount in dispute.

### Rule of construction

Nothing in Part B of IDEA restricts or limits the rights, procedures, and remedies available under the U.S. Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973 (Section 504), or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under Part B of IDEA, the due process procedures described above must be exhausted to the same extent as would be required if the party filed the action under Part B of IDEA. This means that you may have remedies available under other laws that overlap with those available under IDEA, but in general, to obtain relief under those other laws, you must first use the available administrative remedies under IDEA (i.e., the due process complaint; resolution process, including the resolution meeting; and impartial due process hearing procedures) before going directly into court.

## THE CHILD'S PLACEMENT WHILE THE DUE PROCESS COMPLAINT AND HEARING ARE PENDING

### 34 CFR §300.518

Except as provided below under the heading **PROCEDURES WHEN DISCIPLINING CHILDREN WITH DISABILITIES**, once a due process complaint is sent to the other party, during the resolution process time period, and while waiting for the decision of any impartial due process hearing or court proceeding, unless you and the State or

school district agree otherwise, your child must remain in his or her current educational placement.

If the due process complaint involves an application for initial admission to public school, your child, with your consent, must be placed in the regular public school program until the completion of all such proceedings.

If the due process complaint involves an application for initial services under Part B of IDEA for a child who is transitioning from being served under Part C of IDEA to Part B of IDEA and who is no longer eligible for Part C services because the child has turned three, the school district is not required to provide the Part C services that the child has been receiving. If the child is found eligible under Part B of IDEA and you consent for your child to receive special education and related services for the first time, then, pending the outcome of the proceedings, the school district must provide those special education and related services that are not in dispute (those which you and the school district both agree upon).

If a hearing officer in a due process hearing conducted by the State Educational Agency agrees with you that a change of placement is appropriate, that placement must be treated as your child's current educational placement where your child will remain while waiting for the decision of any impartial due process hearing or court proceeding.

## **ATTORNEYS' FEES**

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### **34 CFR §300.517**

#### **General**

In any action or proceeding brought under Part B of IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to you, if you prevail (win).

In any action or proceeding brought under Part B of IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing State Educational Agency or school district, to be paid by your attorney, if the attorney: (a) filed a complaint or court case that the court finds is frivolous, unreasonable, or without foundation; or (b) continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

In any action or proceeding brought under Part B of IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing State Educational Agency or school district, to be paid by you or your attorney, if your request for a due process hearing or later court case was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to unnecessarily increase the cost of the action or proceeding (hearing).

### Award of fees

A court awards reasonable attorneys' fees as follows:

1. Fees must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.
2. Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Part B of IDEA for services performed after a written offer of settlement is made to you if:
  - a. The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of a due process hearing or State-level review, at any time more than 10 calendar days before the proceeding begins;
  - b. The offer is not accepted within 10 calendar days; **and**
  - c. The court or administrative hearing officer finds that the relief finally obtained by you is not more favorable to you than the offer of settlement.

Despite these restrictions, an award of attorneys' fees and related costs may be made to you if you prevail and you were substantially justified in rejecting the settlement offer.

3. Fees may not be awarded relating to any meeting of the individualized education program (IEP) Team unless the meeting is held as a result of an administrative proceeding or court action.

Fees also may not be awarded for a mediation as described under the heading **Mediation**.

A resolution meeting, as described under the heading **Resolution Process**, is not considered a meeting convened as a result of an administrative hearing or court action, and also is not considered an administrative hearing or court action for purposes of these attorneys' fees provisions.

The court reduces, as appropriate, the amount of the attorneys' fees awarded under Part B of IDEA, if the court finds that:

1. You, or your attorney, during the course of the action or proceeding, unreasonably delayed the final resolution of the dispute;
2. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably similar skill, reputation, and experience;
3. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; **or**
4. The attorney representing you did not provide to the school district the appropriate information in the due process request notice as described under the heading **Due Process Complaint**.



However, the court may not reduce fees if the court finds that the State or school district unreasonably delayed the final resolution of the action or proceeding or there was a violation under the procedural safeguards provisions of Part B of IDEA.

## PROCEDURES WHEN DISCIPLINING CHILDREN WITH DISABILITIES

### AUTHORITY OF SCHOOL PERSONNEL

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#### 34 CFR §300.530

##### Case-by-case determination

School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change of placement, made in accordance with the following requirements related to discipline, is appropriate for a child with a disability who violates a school code of student conduct.

##### General

To the extent that they also take such action for children without disabilities, school personnel may, for not more than **10 school days** in a row, remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension. School personnel may also impose additional removals of the child of not more than **10 school days** in a row in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement (see the heading ***Change of Placement Because of Disciplinary Removals*** for the definition).

Once a child with a disability has been removed from his or her current placement for a total of **10 school days** in the same school year, the school district must, during any subsequent days of removal in that school year, provide services to the extent required below under the sub-heading **Services**.

##### Additional authority

If the behavior that violated the student code of conduct was not a manifestation of the child's disability (see the subheading ***Manifestation determination***) and the disciplinary change of placement would exceed **10 school days** in a row, school personnel may apply the disciplinary procedures to that child with a disability in the same manner and for the same duration as it would to children without disabilities, except that the school must provide services to that child as described below under **Services**. The child's IEP Team determines the interim alternative educational setting for such services.

##### Services

The school district does not provide services to a child with a disability or a child without a disability who has been removed from his or her current placement for **10 school days or less** in that school year.

A child with a disability who is removed from the child's current placement for **more than 10 school days** and the behavior is not a manifestation of the child's disability (see subheading, **Manifestation determination**) or who is removed under special circumstances (see the subheading, **Special circumstances**) must:

1. Continue to receive educational services (have available a free appropriate public education), so as to enable the child to continue to participate in the general education curriculum, although in another setting (that may be an interim alternative educational setting), and to progress toward meeting the goals set out in the child's IEP; **and**
2. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, which are designed to address the behavior violation so that it does not happen again.

After a child with a disability has been removed from his or her current placement for **10 school days** in that same school year, and **if** the current removal is for **10 school days** in a row or less **and** if the removal is not a change of placement (see definition below), **then** school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

If the removal is a change of placement (see the heading, **Change of Placement Because of Disciplinary Removals**), the child's IEP Team determines the appropriate services to enable the child to continue to participate in the general education curriculum, although in another setting (that may be an interim alternative educational setting), and to progress toward meeting the goals set out in the child's IEP.

### **Manifestation determination**

Within **10 school days** of any decision to change the placement of a child with a disability because of a violation of a code of student conduct (except for a removal that is for **10 school days** in a row or less and not a change of placement), the school district, you, and other relevant members of the IEP Team (as determined by you and the school district) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by you to determine:

1. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; **or**
2. If the conduct in question was the direct result of the school district's failure to implement the child's IEP.

If the school district, you, and other relevant members of the child's IEP Team determine that either of those conditions was met, the conduct must be determined to be a manifestation of the child's disability.

If the school district, you, and other relevant members of the child's IEP Team determine that the conduct in question was the direct result of the school district's failure

to implement the IEP, the school district must take immediate action to remedy those deficiencies.

### **Determination that behavior was a manifestation of the child's disability**

If the school district, you, and other relevant members of the IEP Team determine that the conduct was a manifestation of the child's disability, the IEP Team must either:

1. Conduct a functional behavioral assessment, unless the school district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or
2. If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior.

Except as described below under the sub-heading ***Special circumstances***, the school district must return your child to the placement from which your child was removed, unless you and the district agree to a change of placement as part of the modification of the behavioral intervention plan.

### **Special circumstances**

Whether or not the behavior was a manifestation of your child's disability, school personnel may remove a student to an interim alternative educational setting (determined by the child's IEP Team) for not more than 45 school days, if your child:

1. Carries a weapon (see the definition below) to school or has a weapon at school, on school premises, or at a school function under the jurisdiction of the State Educational Agency or a school district;
2. Knowingly has or uses illegal drugs (see the definition below), or sells or solicits the sale of a controlled substance, (see the definition below), while at school, on school premises, or at a school function under the jurisdiction of the State Educational Agency or a school district; or
3. Has inflicted serious bodily injury (see the definition below) upon another person while at school, on school premises, or at a school function under the jurisdiction of the State Educational Agency or a school district.

### **Definitions**

*Controlled substance* means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

*Illegal drug* means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

*Serious bodily injury* has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

*Weapon* has the meaning given the term “dangerous weapon” under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

### Notification

On the date it makes the decision to make a removal that is a change of placement of your child because of a violation of a code of student conduct, the school district must notify you of that decision, and provide you with a procedural safeguards notice.

## CHANGE OF PLACEMENT BECAUSE OF DISCIPLINARY REMOVALS

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### 34 CFR §300.536

A removal of your child with a disability from your child’s current educational placement is a **change of placement** if:

1. The removal is for more than 10 school days in a row; **or**
2. Your child has been subjected to a series of removals that constitute a pattern because:
  - a. The series of removals total more than 10 school days in a school year;
  - b. Your child’s behavior is substantially similar to the child’s behavior in previous incidents that resulted in the series of removals; and
  - c. Of such additional factors as the length of each removal, the total amount of time your child has been removed, and the proximity of the removals to one another.

Whether a pattern of removals constitutes a change of placement is determined on a case-by-case basis by the school district and, if challenged, is subject to review through due process and judicial proceedings.

## DETERMINATION OF SETTING

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### 34 CFR §300.531

The individualized education program (IEP) Team determines the interim alternative educational setting for removals that are **changes of placement**, and removals under the subheadings ***Additional authority*** and ***Special circumstances***.

## APPEAL

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### 34 CFR §300.532

#### General

You may file a due process complaint (see the heading ***Due Process Complaint Procedures***) to request a due process hearing if you disagree with:

1. Any decision regarding placement made under these discipline provisions; ***or***
2. The manifestation determination described above.

The school district may file a due process complaint (see above) to request a due process hearing if it believes that maintaining the current placement of your child is substantially likely to result in injury to your child or to others.

#### Authority of hearing officer

A hearing officer that meets the requirements described under the subheading ***Impartial hearing officer*** must conduct the due process hearing and make a decision. The hearing officer may:

1. Return your child with a disability to the placement from which your child was removed if the hearing officer determines that the removal was a violation of the requirements described under the heading ***Authority of School Personnel***, or that your child's behavior was a manifestation of your child's disability; ***or***
2. Order a change of placement of your child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of your child is substantially likely to result in injury to your child or to others.

These hearing procedures may be repeated, if the school district believes that returning your child to the original placement is substantially likely to result in injury to your child or to others.

Whenever you or a school district files a due process complaint to request such a hearing, a hearing must be held that meets the requirements described under the headings ***Due Process Complaint Procedures, Hearings on Due Process Complaints***, except as follows:

1. The State Educational Agency or school district must arrange for an expedited due process hearing, which must occur within ***20*** school days of the date the hearing is requested and must result in a determination within ***10*** school days after the hearing.
2. Unless you and the school district agree in writing to waive the meeting, or agree to use mediation, a resolution meeting must occur within ***seven*** calendar days of receiving notice of the due process complaint. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within ***15*** calendar days of receipt of the due process complaint.

3. A State may establish different procedural rules for expedited due process hearings than it has established for other due process hearings, but except for the timelines, those rules must be consistent with the rules in this document regarding due process hearings.

You or the school district may appeal the decision in an expedited due process hearing in the same way as for decisions in other due process hearings (see the heading ***Appeal***).

## PLACEMENT DURING APPEALS

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### 34 CFR §300.533

When, as described above, you or the school district file a due process complaint related to disciplinary matters, your child must (unless you and the State Educational Agency or school district agree otherwise) remain in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the time period of removal as provided for and described under the heading ***Authority of School Personnel***, whichever occurs first.

## PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES

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### 34 CFR §300.534

#### General

If your child has not been determined eligible for special education and related services and violates a code of student conduct, but the school district had knowledge (as determined below) before the behavior that brought about the disciplinary action occurred, that your child was a child with a disability, then your child may assert any of the protections described in this notice.

#### Basis of knowledge for disciplinary matters

A school district will be deemed to have knowledge that your child is a child with a disability if, before the behavior that brought about the disciplinary action occurred:

1. You expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or to your child's teacher that your child is in need of special education and related services;
2. You requested an evaluation related to eligibility for special education and related services under Part B of IDEA; **or**
3. Your child's teacher or other school district personnel expressed specific concerns about a pattern of behavior demonstrated by your child directly to the

school district's director of special education or to other supervisory personnel of the school district.

### **Exception**

A school district would not be deemed to have such knowledge if:

1. You have not allowed an evaluation of your child or have refused special education services; **or**
2. Your child has been evaluated and determined to not be a child with a disability under Part B of IDEA.

### **Conditions that apply if there is no basis of knowledge**

If prior to taking disciplinary measures against your child, a school district does not have knowledge that your child is a child with a disability, as described above under the sub-headings ***Basis of knowledge for disciplinary matters*** and ***Exception***, your child may be subjected to the disciplinary measures that are applied to children without disabilities who engage in comparable behaviors.

However, if a request is made for an evaluation of your child during the time period in which your child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner.

Until the evaluation is completed, your child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

If your child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the school district, and information provided by you, the school district must provide special education and related services in accordance with Part B of IDEA, including the disciplinary requirements described above.

## **REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES**

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### **34 CFR §300.535**

Part B of IDEA does not:

1. Prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities; **or**
2. Prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.



### **Transmittal of records**

If a school district reports a crime committed by a child with a disability, the school district:

1. Must ensure that copies of the child's special education and disciplinary records are transmitted for consideration by the authorities to whom the agency reports the crime; **and**
2. May transmit copies of the child's special education and disciplinary records only to the extent permitted by the Family Educational Rights and Privacy Act (FERPA).

## **REQUIREMENTS FOR UNILATERAL PLACEMENT BY PARENTS OF CHILDREN IN PRIVATE SCHOOLS AT PUBLIC EXPENSE**

### **GENERAL**

#### **34 CFR §300.148**

Part B of IDEA does not require a school district to pay for the cost of education, including special education and related services, of your child with a disability at a private school or facility if the school district made a free appropriate public education (FAPE) available to your child and you choose to place the child in a private school or facility. However, the school district where the private school is located must include your child in the population whose needs are addressed under the Part B provisions regarding children who have been placed by their parents in a private school under 34 CFR §§300.131 through 300.144.

#### **Reimbursement for private school placement**

If your child previously received special education and related services under the authority of a school district, and you choose to enroll your child in a private preschool, elementary school, or secondary school without the consent of or referral by the school district, a court or a hearing officer may require the agency to reimburse you for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education (FAPE) available to your child in a timely manner prior to that enrollment and that the private placement is appropriate. A hearing officer or court may find your placement to be appropriate, even if the placement does not meet the State standards that apply to education provided by the State Educational Agency and school districts.

#### **Limitation on reimbursement**

The cost of reimbursement described in the paragraph above may be reduced or denied:

1. If: (a) At the most recent individualized education program (IEP) meeting that you attended prior to your removal of your child from the public school, you did not inform the IEP Team that you were rejecting the placement proposed by the school district to provide FAPE to your child, including stating your concerns and your intent to enroll your child in a private school at public expense; or (b) At least 10 business days (including any holidays that occur on a business day) prior to your removal of your child from the public school, you did not give written notice to the school district of that information;
2. If, prior to your removal of your child from the public school, the school district provided prior written notice to you of its intent to evaluate your child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but you did not make the child available for the evaluation; **or**

3. Upon a court's finding that your actions were unreasonable.

However, the cost of reimbursement:

1. Must not be reduced or denied for failure to provide the notice if: (a) The school prevented you from providing the notice; (b) You had not received notice of your responsibility to provide the notice described above; or (c) Compliance with the requirements above would likely result in physical harm to your child; **and**
2. May, in the discretion of the court or a hearing officer, not be reduced or denied for your failure to provide the required notice if: (a) You are not literate or cannot write in English; or (b) Compliance with the above requirement would likely result in serious emotional harm to your child.

**Chapter 12**  
**DISCIPLINE**

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## Chapter 12 Discipline

Schools are encouraged to address student misconduct through appropriate school-wide discipline policies, instructional services, and/or related services. If a student with a disability has behavior problems that interfere with his or her learning or the learning of others, an individualized education program (IEP) team shall consider the use of strategies, including positive behavioral supports and interventions, to address the behavior. If the IEP team determines that such services are needed, they must be included in the IEP and must be implemented.

Students with disabilities who are subject to disciplinary actions by a district are entitled to all of the due process rights afforded students without disabilities under Idaho Code 33-205 and state and local policies. In addition to these rights, the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) provides special education rights and additional discipline procedures to a student with a disability whom the district is removing from his or her current educational placement. These procedures come into play when the district is unable to work out an appropriate placement for the student with the ~~parent and/or adult student~~ parent/adult student. Further, these procedures do not prevent district personnel from maintaining a safe environment conducive to learning that is critical for all students.

Even though Idaho Code allows district personnel to “temporarily suspend” students for up to twenty (20) school days, all students with disabilities who have been suspended or expelled for more than ten (10) consecutive or cumulative school days in a school year retain the right to a free appropriate public education. (FAPE).

### Section 1. General Discipline ~~Guidelines~~ Provisions

The general requirements pertaining to the discipline procedures of special education students are as follows:

1. District personnel may remove a student from his or her current placement to an appropriate Interim Alternative Education Setting (IAES) or another setting for not more than ten (10) consecutive days to the extent those alternatives are applied to students without disabilities.
2. District personnel may suspend any student, including a special education student, for up to ten (10) cumulative school days in a school year if he or she violates the code of student conduct, and services may cease during this period. In accordance with Idaho Code (unless services are provided to students who are nondisabled who are so suspended):
  - a. A school principal has the authority to order a temporary disciplinary suspension for up to five (5) school days.

- b. The superintendent can extend the disciplinary suspension for an additional ten (10) school days.
  - c. Provided, that on a finding by the Board of Trustees that the student's immediate return to school would be detrimental to other students' health, welfare or safety, the Board of Trustees may extend the temporary suspension for an additional five (5) school days.
  - d. Prior to suspending any student, the superintendent or principal shall grant an informal hearing on the reasons for the suspension and the opportunity to challenge those reasons. Any student who has been suspended may be readmitted to the school by the superintendent or principal who suspended him or her upon such reasonable conditions as said superintendent or principal may prescribe.
- 3. A series of suspensions exceeding ten (10) days in a school year shall not constitute a pattern of removals resulting in a change of placement, without following the procedures discussed in this chapter.
- 4. Students who have not been determined eligible for special education may be entitled to an evaluation and other IDEA 2004 rights—including the right to FAPE during periods of disciplinary suspension that extend beyond ten (10) cumulative school days in a school year if:
  - a. The district had basis of knowledge that the student met the IDEA 2004 eligibility prior to the behavior that precipitated the disciplinary suspension; and
  - b. The ~~parent and/or adult student~~ parent/adult student asserts the right to FAPE.

## **Section 2. Actions Involving a Change of Placement**

A change of placement is a removal from the student's current educational placement for more than ten (10) consecutive school days or a series of removals that constitute a pattern when they total more than ten (10) cumulative school days in a school year. Factors such as the student's behavior is substantially similar to behavior in previous incidents that resulted in series of removals, the length of the removal, the proximity of the removals to one another, and the total amount of time the student is removed are indicators of a pattern. Whether a pattern of removals constitutes a change of placement will be determined on a case-by-case basis by the district; the district's determination is subject to review through an expedited due process hearing and judicial proceedings. The district may consider any unique circumstances in determining whether to pursue a disciplinary change of placement.

The parent shall be provided with written notice on the date on which the decision is made to remove the student if it constitutes a change of placement. A copy of the IDEA's procedural safeguards shall be provided with the notice.

Even if the disciplinary action is to suspend or expel a student, FAPE [educational services] cannot cease for more than ten (10) cumulative school days in a school year.

A manifestation determination is required if the district is considering removing a student with a disability from his or her educational placement for disciplinary reasons which constitute a change of placement or placing a student in an IAES. A manifestation determination is defined as a review of the relationship between the student's disability and the behavior subject to disciplinary action. See Section 4 of this chapter for more information.

#### **A. District Actions Resulting in a Change of Disciplinary Placement**

District administrators change a student's placement by:

1. Unilaterally removing a special education student from his or her current placement for:
  - a. More than ten (10) consecutive school days in a school year; or
  - b. Subjecting a special education student to a series of removals that constitute a pattern:
    - 1) Because the series of removals total more than ten (10) school days in a school year;
    - 2) Because the student's behavior is substantially similar to behavior in previous incidents that resulted in the series of removals; and
    - 3) Because of such additional factors as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.
2. District personnel may remove a student to an IAES for not more than forty-five (45) school days without regard to whether the behavior is determined to be a manifestation of the student's disability if the student:
  - a. Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of a State Education Agency (SEA) or a Local Education Agency (LEA); or
  - b. Knowingly possesses or uses illegal drugs *or* sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or



- c. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA, ~~defined as bodily injury that involves:~~

- 1) ~~A substantial risk of death;~~
- 2) ~~Extreme physical pain; or~~
- 3) ~~Protracted and obvious disfigurement; or protracted loss or impairment of the function of the bodily member, organ, or mental faculty.~~

The term “dangerous weapon” means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2½ inches in length.

“Illegal drug” means a controlled substance but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under any provision of Federal law.

Serious bodily injury is defined as bodily injury that involves:

- a. a substantial risk of death;
- b. extreme physical pain; or
- c. protracted and obvious disfigurement; or protracted loss or impairment of the function of the bodily member, organ, or mental faculty.

## **B. Hearing Officer Actions Resulting in a Change of Placement**

Through an expedited due process hearing, district administrators may ask a hearing officer to place a student with a disability in an appropriate IAES.

1. In requesting a hearing officer to place a student in an IAES, the district must:
  - a. ~~Demonstrate~~ demonstrate by substantial evidence that maintaining the current placement is substantially likely to result in injury to the student or others; and
  - b. ~~Indicate~~ indicate whether the request is for an *initial* period of not more than forty-five (45) school days or an *additional* period of not more than forty-five (45) school days.
2. In determining whether to grant a district’s request to place a student in an IAES, the hearing officer must: ~~a. Determine~~ determine that the IAES proposed by district personnel in consultation with the student’s special education teacher or the IEP team is appropriate.

### C. Court Actions Resulting in a Change of Placement (~~Honig Injunction~~)

District administrators may seek a court order (called a “Honig Injunction”) to remove a special education student from school or the current placement at any time. ~~FAPE [e Educational services]~~ FAPE shall not cease during an injunction.

### Section 3. FAPE Considerations

Services ~~may~~ shall not cease and the district shall always provide FAPE to the student with a disability:

1. ~~After~~ after a student with a disability is removed for ten (10) school days in the same school year and subsequent days of removal ~~do not constitute a change of placement;~~ and
2. ~~There~~ there is a disciplinary change of placement.

### A. District Actions When there is Not a Change in Placement

1. Notify the ~~parent and/or adult student~~ parent/adult student of the disciplinary action to be taken on the date of the decision.;
2. School personnel, in consultation with at least one of the child’s teachers, determine the extent to which services are needed so as to enable the child to continue to participate in the general education curriculum although in another setting and to progress towards meeting IEP goals.;
3. Conduct as appropriate a functional behavioral assessment (FBA) and provide behavioral intervention services and modifications designed to address the behavior violation so that it does not recur.

### B. District Actions When There is a Change of Placement

Whenever disciplinary action results in a change in placement, the district must:

1. ~~Notify~~ notify the ~~parent and/or adult student~~ parent/adult student of the disciplinary action to be taken on the date of the decision and provide a copy of the *Procedural Safeguards Notice*;
2. ~~The~~ hold an IEP team meeting to determine the extent to which services are needed so as to enable the child to continue to participate in the general education curriculum although in another setting and to progress towards meeting IEP goals; and

3. ~~Conduct~~ conduct a manifestation determination immediately, if possible, but not later than ten (10) school days after the date on which the decision to take the disciplinary action is made.

### C. FAPE Requirements in an IAES

If the student's placement will change to an IAES, the IEP team shall select an IAES that enables the student to:

1. continue to participate in the general education curriculum;
2. progress toward meeting the goals set out in his or her IEP; and
3. receive, as appropriate, an FBA and behavioral intervention services to address the behavior violation so that it does not recur.

### D. Transportation

If the IEP team determines that special transportation is required as a related service it must be included in and documents it on the IEP, all procedural safeguards under the IDEA 2004 shall be afforded to the student in matters concerning transportation. Whether a suspension from the bus counts as a suspension from school depends on whether bus transportation is identified on the IEP:

1. If bus transportation is on the IEP, a suspension from the bus would be treated as a suspension from school (unless the district provides transportation services in some other way, such as "transportation in lieu of") because transportation is necessary for the student to obtain access to the location where all other services will be delivered.
2. If bus transportation is not on the IEP, a suspension from the bus would not be counted as suspension from school. In these cases, the student and the parent would have the same obligation to get to and from school as a student without a disability who had been suspended from the bus.

If the student's behavior on the bus results in a suspension from the bus, the IEP team shall consider whether the behavior should be addressed in a Behavioral Intervention Plan (BIP).

## Section 4. Procedures for a Manifestation Determination

A manifestation determination by the ~~parent and/or adult student~~ parent/adult student and relevant IEP team members (as determined by the district and ~~parents and/or adult students~~ parents/adult students) involves a review of the relationship between the student's disability and the behavior subject to disciplinary action.

### A. Actions Involving a Manifestation Determination

When a disciplinary action results in a change of placement or placement in an IAES, the district will take the following actions:

1. The ~~parent and/or adult student~~ parent/adult student will be notified of the disciplinary action and provided with a copy of the *Procedural Safeguards Notice* not later than the date on which the decision to take disciplinary action is made.
2. A meeting will be held immediately, if possible, but no later than ten (10) school days after the date on which the decision to take disciplinary action is made. This meeting will include the district, the ~~parent and/or adult student~~ parent/adult student, and other relevant members of the IEP team (as determined by the parent and the district). The purpose of the meeting is to review all relevant information in the student's file including:
  - a. ~~The~~ the student's IEP; and
  - b. ~~Any~~ any teacher observations; and
  - c. ~~Any~~ any relevant information provided by the ~~parent and/or adult student~~ parent/adult student.
3. Based on a review of the information, the district, parent, and relevant members IEP team, ~~(relevant members as determined by the parent and the district,)~~ will determine if the conduct in question was:
  - a. ~~Caused~~ caused by or had a direct and substantial relationship to the student's disability; or
  - b. ~~The~~ the direct result of the district's failure to implement the IEP. ~~{(If so, the deficiencies must be immediately remedied.)}~~

If the district, parent, and relevant members IEP team ~~IEP team, (relevant members determined by the parent and the district)~~, finds that either a or b above is true, the student's behavior will be determined to be a manifestation of his or her disability.

#### **B. When Behavior Is a Manifestation of the Disability**

If a student's behavior is determined to be a manifestation of his or her disability, the IEP team, (relevant members determined by the parent and the district), will:

1. ~~Conduct~~ conduct an FBA and implement a BIP for the student if the district had not conducted such an assessment prior to the behavior that resulted in a change in placement;

2. ~~Review~~review the BIP if one had previously been developed and modify it as necessary to address the behavior;
3. ~~Return~~return the student to the placement from which he or she was removed, unless the parent and district agree in writing to a change of placement as part of the modification of the BIP.

If there were grounds to place a student in an IAES, the student may remain in the IAES even if there was a manifestation.

### **C. When Behavior Is Not a Manifestation of Disability**

If the IEP team, (relevant members determined by the parent and the district), determines that the student's behavior was not a manifestation of his or her disability, the same disciplinary procedures applicable to students without disabilities, including long-term suspension or expulsion, may be applied to the student with a disability. The district will forward special education and disciplinary records for consideration to the board of trustees, which makes the final decision regarding the disciplinary action.

Even if the disciplinary action is to suspend or expel, the following provisions shall be met:

1. Educational services cannot cease for more than ten (10) school days in a school year. Educational services shall be provided to the extent necessary to allow the student with a disability to continue to participate in access to the general education curriculum and the opportunity to advance toward achieving the goals set out in his or her IEP.
2. An IEP team shall convene to develop an IEP that specifies what special education and related services will be provided during the period of suspension or expulsion.

## **Section 5. Other Considerations**

### **A. Request for an Expedited Hearing**

An expedited hearing is a hearing that occurs within twenty (20) school days of the request with a decision rendered within ten (10) school days of the hearing.

1. The ~~parent and/or adult student~~parent/adult student may request an expedited due process hearing if he or she:
  - a. ~~Disagrees~~disagrees with the determination that the behavior was not a manifestation of the student's disability;
  - b. ~~Disagrees~~disagrees with any decision of the IEP team regarding a change of placement during a disciplinary proceeding; or

- c. ~~Disagrees~~ disagrees with the decision regarding the student's placement in an IAES.
2. The district may request an expedited hearing if it believes that maintaining the current placement is substantially likely to result in injury to the student or to others.
3. When an appeal of a disciplinary action is requested (~~either by the parent and/or adult student-parent/adult student~~ parent/adult student to challenge the action or by the district to seek removal to an interim setting), the student remains in the IAES pending the decision of the hearing officer or the expiration of the disciplinary placement term, whichever occurs first unless the ~~parent and/or adult student-parent/adult student~~ parent/adult student and district agree otherwise.
4. Resolution meeting requirements apply but are shortened to fifteen (15) and seven (7) days. No challenge for sufficiency of request is available.
5. A decision of a hearing officer in an expedited hearing may be appealed to federal or state district court.

See Chapter 13, Sections 4 and 5, for an explanation of regular and expedited due process hearing rights and procedures.

## **B. Protections for Students Not Yet Eligible for Special Education**

A student who has not been determined eligible for special education and who has violated any rule or code of conduct of the district may assert the protections of the IDEA 2004 *if* the district had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action.

### **1. Basis of knowledge**

With limited exceptions, which are described in item 2 below, the district will be deemed to have knowledge that an individual is a student with a disability if before the behavior that precipitated the disciplinary action occurred one or more of the following is true:

- a. The ~~parent and/or adult student-parent/adult student~~ parent/adult student has expressed concern to supervisory or administrative district personnel or a teacher of the child that the student is in need of special education and related services. The concern must be expressed in writing unless the ~~parent and/or adult student-parent/adult student~~ parent/adult student is unable to write or has a disability that prevents a written statement.
- b. The ~~parent and/or adult student-parent/adult student~~ parent/adult student has requested that the student be evaluated for special education.

- c. The student's teacher or other district personnel have expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education or to other district supervisory personnel in accordance with the district's established Child Find system or special education referral system.

2. No basis of knowledge

The district will be deemed not to have knowledge that an individual is a student with a disability if one or more of the following is true:

- a. An evaluation was conducted and a determination was made that the student did not have a disability.
- b. The ~~parent and/or adult student~~ parent/adult student did not give written consent for an evaluation.
- c. The ~~parent and/or adult student~~ parent/adult student refused special education services.

If the district did not have a basis of knowledge that a student was a student with a disability prior to taking disciplinary measures, the student is subjected to the same disciplinary measures applied to all other students who engage in comparable behaviors.

**C. ~~Parent and/or Adult Student~~ Parent/Adult Student Request for Evaluation of a Disciplined Student**

If a request for an evaluation of a student who is not currently eligible for special education is made during the period in which the student is subject to disciplinary measures, the evaluation will be conducted in an expedited manner. Pending the results of the evaluation, the student will remain in the educational placement determined by district officials, which can include suspension or expulsion without educational services.

- 1. If the student is subsequently determined eligible for special education, the district will:
  - a. Convene an IEP team meeting to develop an IEP.
  - b. Conduct a manifestation determination.
    - 1) If the behavior is caused by or had a substantial relationship to the student's disability, the disciplinary action must be set aside, and the student must be provided appropriate educational services in the least restrictive environment (LRE).

- 2) If the behavior is not caused by nor had a substantial relationship to the student's disability, the student is subject to the disciplinary placement that had been determined, but he or she is still entitled to receive FAPE, which is determined by the IEP team. Educational services cannot cease for more than ten (10) school days in a school year. Educational services shall be provided to the extent necessary to allow the student with a disability access to the general education curriculum and the opportunity to advance toward achieving the goals set out in his or her IEP.
2. If the evaluation team determines that the student is not eligible for special education, he or she will be subject to the same disciplinary actions as all other students.

#### **D. Referrals to and Action by Law Enforcement and Judicial Authorities**

1. The district may report a crime committed by a student with a disability to appropriate authorities. The IDEA 2004 does not prevent state law enforcement or judicial authorities from exercising their responsibilities, with regard to the application of federal and state law, for crimes committed by a student with a disability.
2. If a student brings a firearm to school, law enforcement shall be contacted pursuant to the Gun-Free Schools Act.
3. If the district reports a crime, it will ensure that copies of the special education and disciplinary records of the student are given to the appropriate law enforcement authorities for their consideration, to the extent the release of records is permitted by the Family Educational Rights and Privacy Act (FERPA). Generally, the release of records requires consent, but exceptions are listed in Chapter 11, Section 5.

#### **E. Transfer of Discipline Records**

Idaho Code 33-209 requires that whenever a student transfers to a new school and a school record contains information concerning violent or disruptive behavior or disciplinary action involving the student, this information will be included in the transfer of records to the new school. The transmission of the student's record shall include both the student's current IEP, including the FBA, BIP, and any current or previous disciplinary action taken. This information will be contained in a sealed envelope marked to indicate the confidential nature of the contents and addressed to the principal or other administrative officer of the school.

When the district initiates disciplinary proceedings applicable to all students, the special education and disciplinary records of students with disabilities shall be given to authorized district personnel for their consideration in making the final determination regarding the disciplinary action.





Chapter 13

DISPUTE RESOLUTION

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## Chapter 13 Dispute Resolution

On occasion, conflicts arise between school districts and ~~families parents and/or adult students~~. Several mechanisms are available through the State Department of Education (SDE) to assist in resolving a dispute ~~disputes~~. The processes are ~~individualized education program (IEP)~~ facilitation, informal conflict resolution, mediation, ~~formal complaints~~ state administrative complaints, due process hearings, and expedited due process hearings. This chapter contains information on each of these processes. The information contained within this chapter is not intended to limit in any manner the procedural due process/dispute resolution rights provided by federal or state law.

### Contact Information

In addition to providing general information and support concerning IDEA related issues, the SDE accepts formal complaints requests for IEP-facilitation, informal conflict resolution, and mediation by telephone and e-mail. State administrative complaints; and due process hearings are accepted via fax, mail, and personal delivery, or may be scanned and attached to an email. All state administrative complaints and due process hearing requests must include a signature of the filing party. Additionally, requests for IEP facilitation and mediation may also be made by telephone. Formal complaints and hearing requests-Requests for SDE dispute resolution should be directed to:

Dispute Resolution Coordinator  
State Department of Education  
Special Education  
~~Student Achievement and School Improvement~~  
~~Special Education~~  
P.O. Box 83720  
Boise, ID 83720-0027  
208/332-6912  
800/432-4601  
TT: 800/377-3529  
Fax: 208/334-2228

For further assistance in matters relating to dispute resolution, you may contact:

~~DisAbility Rights Idaho (formerly Comprehensive Advocacy, Inc. (Co Ad))~~  
~~4477 Emerald Street, Suite B-100~~  
~~Boise, ID 83706~~  
~~V/TT: 208/336-5353~~  
~~V/TT: 800/632-5125~~

**DisAbility Rights Idaho**

*Web:disabilityrightsidaho.org*

**Boise Office:**

4477 Emerald Street, Suite B-100

Boise, ID 83706-2066

208-336-5353

208-336-5396 (fax)

800-632-5125 (toll-free)

**Pocatello Office:**

1246 Yellowstone Avenue,

Suite A-3

Pocatello, ID 83201-4374

208-232-0922

208-232-0938 (fax)

866-309-1589 (toll-free)

**Idaho Parents Unlimited, Inc. (IPUL)**

500 South 8<sup>th</sup> Street

1878 W Overland

Boise, ID 83705

800/242-IPUL (4785)

V/TT: 208/342-5884

Web: [ipulidaho.org](http://ipulidaho.org)

## Section 1. ~~IEP~~ Facilitation

~~A request for IEP facilitation may be made by the parent and/or adult student parent/adult student or by a district representative, such as a director of special education. Requests may be made in writing or by phone to the SDE Dispute Resolution Coordinator as directed in the introduction to this chapter.~~

### A. Definition of Facilitation

~~IEP facilitation~~ Facilitation is a voluntary process during which an SDE-contracted individual or individuals is appointed to facilitate an IEP team meeting or other IDEA-related meeting. The role of the facilitator is to help team members communicate more effectively and efficiently. ~~IEP facilitation~~ Facilitation supports early dispute resolution, by providing assistance to the IEP team before a potential conflict develops into a more serious formal dispute. An SDE facilitator is trained to help teams focus on key issues and move toward productive outcomes. Because the The facilitator is an impartial third party, not a member of the IEP team, and has no stake in decisions made by the team, he or she can act as a neutral and impartial third-party providing balance and an outsider's perspective on the IEP process and ensuring parties are heard and understood by the rest of the team. Note: a facilitator will not be responsible for creating or documenting agreements made by the team.

~~All IEP facilitators have received specialized training provided by the SDE. Facilitators are selected on a rotational, and/or geographical, basis.~~

~~The SDE provides IEP facilitation at no charge to the district or the parent and/or adult student.~~

### B. ~~IEP~~ Facilitation Requests

~~A request for IEP facilitation may be made by either a parent and/or adult student parent/adult student or a designated district representative, such as a special education the director of special education, who has the authority to allocate resources and has knowledge of special education. A request for IEP facilitation~~ Facilitation: may be requested for any IDEA-related meeting including: eligibility meetings; initial, annual or amended IEP team meetings; due process hearing meetings such as resolution sessions or settlement meetings; as well as manifestation determination meetings, eligibility, and evaluation meetings.

- ~~1. may concern an initial, annual, or amended IEP; that may be considered too difficult to manage; and~~
- ~~2.~~

Requests for facilitation should be made at least two weeks in advance to the meeting. Upon the request The SDE will consider IEP facilitation requests on a case-by-case basis. As part of this consideration, for facilitation, the SDE Dispute Resolution Coordinator Office of Dispute Resolution will immediately contact the other party for approval to determine whether that party

~~is willing to participate;~~ As facilitation is voluntary, both parties shall must agree to IEP facilitation for the process to go forward. The SDE will contact both the parent/adult student and the district representative notifying each who the facilitator will be. The facilitator will contact the parties to conduct pre-facilitation interviews to build an agenda for the facilitation. Generally meetings are scheduled by the district who is responsible for sending out the *Invitation to Meeting*.

### **C. Facilitator Role**

The role of the facilitator is to lead the meeting and guide parties through the process. The facilitator may work with parties in establishing the agenda and determining issues important for parties to cover in the meeting. Facilitators may ask pertinent questions of parties providing occasional clarification or perspective, and work to ensure that participants are able to participate in a productive and balanced meeting. Facilitators are not to make decisions for the teams, serve as definitive experts on IEP processes or matters of law, record minutes for meetings, or finalize documents, although they may facilitate the crafting of language parties will include in a student's IEP.

### **D. SDE Facilitators**

SDE facilitators are trained in effective conflict resolution processes, communication, negotiation, problem-solving skills, and in laws and regulations relating to the provision of special education and related services. While a facilitator in this context will not offer advice on a particular course of action, he or she is required to help parties explore the soundness of any assumptions or agreements. The SDE may appoint one or two individuals to serve as facilitators of an informal conflict resolution meeting.

1. In all cases a facilitator shall not:
  - a. be an employee of the district involved in the dispute;
  - b. have children enrolled in the district involved in the dispute;
  - c. have a personal or professional interest that may affect the ability to remain impartial or neutral; or
  - d. be used if either party rejects the facilitator(s) based on a perceived inability to be neutral or impartial;

### **D. Facilitation Timelines**

The SDE will appoint a facilitator within five (5) business days of an acceptance of a request. Every effort will be made to complete the process within twenty-one (21) calendar days.

## **Section 2. ~~Mediation~~ Informal Conflict Resolution**

### **A. Definition of Informal Conflict Resolution**

The SDE provides informal conflict resolution processes in an effort to improve relationships between parties and foster healthy communication. This informal conflict resolution may include topics outside of those set forth as appropriate for IDEA mediation, extending beyond the identification, evaluation, educational placement or the provision of FAPE. As with mediation, the process of informal conflict resolution is confidential and voluntary, and the third-party is a SDE trained neutral and impartial third-party. Informal conflict resolution may be appropriate when parties face difficulties communicating productively or need to reach understanding on differing perspectives. Any agreements reached between parties are self-enforced.

### **B. Informal Conflict Resolution Requests**

A request for informal conflict resolution may be made in person, writing or via telephone by either a parent/adult student or a district representative. The SDE will screen requests to determine the appropriateness of the process for each individual case. Informal conflict resolution can be scheduled prior to, or concurrent with, a request for a due process hearing or investigation of a state administrative complaint involving an individual student, however cannot be used to delay the state administrative complaint process or a due process hearing timelines. As a matter of course, the SDE offers mediation when a state administrative complaint involves an individual student or a request for a due process hearing has been filed.

Upon request for informal conflict resolution, the SDE Office of Dispute Resolution or the assigned SDE contractor will contact all parties to schedule the meeting. Because informal conflict resolution is voluntary, both parties must verbally state to the SDE their agreement to participate for the process to go forward. Informal conflict resolution can be conducted by SDE contractors or SDE staff as assigned by the Dispute Resolution Coordinator. The SDE provides informal conflict resolution at no charge to the district or to the parent/adult student.

### **C. Informal Conflict Resolution Procedures**

1. No video or audio recording of the meeting proceedings will be made.
2. Because informal conflict resolution is a non-adversarial process that offers the parties the opportunity to communicate directly with each other, legal representation during the meeting is not allowed.
3. The SDE will not retain any documentation or informal agreements created by the parties. No other records of the content of the meeting will be kept by the SDE.
4. Either party has the option to end the informal conflict resolution meeting at any time.



#### **D. Informal Conflict Resolution Timelines**

The SDE will appoint a facilitator within five (5) business days of an acceptance of a request. The meeting will be held in a location convenient to the parties involved, and every effort will be made to complete the process within twenty-one (21) calendar days.

#### **E. Confidentiality**

Discussions that occur during the informal conflict resolution process are confidential and cannot be used as evidence in any subsequent due process hearing or civil proceeding in any states or federal court. The facilitator may require a confidentiality agreement be signed by participants.

#### **F. Nature of Agreements**

An agreement reached by the parties through informal conflict resolution, whether memorized in writing or agreed to verbally, are self-enforced and not enforceable by the SDE.

### **Section 3. Mediation**

~~The SDE has developed a mediation system to help resolve disagreements between a districts and parents and/or adult students regarding the identification, evaluation, educational placement, and the provision of a free appropriate public education (FAPE). A request for mediation may be made by either the parent and/or adult student or the district at any time point without the necessity to request a due process hearing. Requests may be made in writing or by phone to the SDE Dispute Resolution Coordinator as directed in the introduction to this chapter.~~

~~The ultimate goal of mediation is to obtain a written agreement that is acceptable to both parties. Mediation agreements are legally binding. Even if a written agreement is not achieved, mediation may be helpful in clarifying issues.~~

#### **A. Definition of Mediation**

~~Mediation is a structured, confidential and voluntary process in which where an SDE trained neutral and an impartial third-party provides a structure for (a mediator) assists parents and/or adult students parents/adult students and district personnel to identify points of agreement and work to resolve points of disagreement concerning the identification, evaluation, educational placement, or provision of FAPE resolve disputes. Mediation aims to builds positive working relationships, encourages mutual understanding, and helps the parties focus on their common interest—the student. The district will not use the term “mediation” to refer to any district level process for resolving disputes.~~

While discussions in mediation are confidential and parties are asked to sign a confidentiality agreement, written agreements produced in mediation are legally-binding and enforceable in state or federal court. With the agreement of all parties in the mediation, an IEP may be amended as part of a written agreement.

Mediation may be appropriate when parties are in disagreement and seem unable to move forward without outside assistance, or they, after making a good-faith effort, face an impasse in an attempt to resolve the disagreement. Mediation can be scheduled prior to, or concurrent with, a request for a due process hearing or investigation of a state administrative complaint.

**The Special Education Mediation Process Is:**

**Voluntary** for parent and or adult student and school personnel;

**Offered** when disputes arise, including, but not limited to, formal complaints and due process hearing requests;

**Confidential**, thus encouraging all participants to speak freely;

A **No-Cost Service** to parents and or adult students and schools provided by the SDE; and

An **Alternative** that does not delay the status of a due process hearing or formal complaint.

**B. Mediation Policies Requests**

Mediation offered by the SDE is voluntary, confidential, and at no cost to the parent and/or adult student ~~parent/adult student or district.~~

- ~~1. Both the district and the parent and/or adult student parent/adult student may request mediation at any time.~~
- ~~2. The SDE has the discretion to suggest mediation to either party at any time it deems appropriate, but is required to make mediation available to the parties after a formal complaint or a request for a due process hearing has been filed.~~

~~Following a request for mediation, the SDE will contact the other party and ask whether they are willing to participate in mediation. Mediation may not be used to deny or delay the right to a due process hearing or any other rights afforded to students and parents.~~

A request for mediation may be made in person, writing or via telephone by either a parent/adult student or a district representative at any point in a dispute, including after a complaint involving an individual student or due process hearing request has been filed. The SDE will screen all mediation requests to determine the appropriateness of the process for each individual case. The

SDE may offer mediation when a state administrative complaint involving an individual student or a request for a due process hearing has been filed. Mediation cannot be used to delay the state administrative complaint process or a due process hearing timelines.

Upon request for mediation, the SDE Dispute Resolution office will contact all parties to schedule the mediation. Because mediation is voluntary, both parties must verbally state to the SDE their agreement to mediate for the process to go forward. Mediators are selected by SDE from a list of SDE trained professionals. The SDE provides mediation at no charge to the district or to the parent/adult student.

### **C. ~~Mediation System~~ Mediation Procedures**

1. The mediation will be conducted in compliance with the IDEA.
2. No video or audio recording of the mediation proceedings will be made.
3. Each party is limited to no more than three participants ~~and shall designate a person who has~~ have the authority to make final resolution decisions. The mediator may increase this number at his or her discretion and with agreement of all parties.
4. The district shall have at least one representative present who has the authority to commit resources.
5. Because mediation is a non-adversarial process that offers the parties the opportunity to communicate directly with each other, legal representation during a mediation session is ~~strongly~~ discouraged.
6. ~~Except for the signed agreement and confidentiality pledge, all notes or records taken during the proceedings will be collected and destroyed by the mediator at the conclusion of the mediation session.~~ The SDE will retain copies of the signed agreement, if an agreement is reached, and the confidentiality agreement. No other records of the mediation will be kept by the SDE. (See the *Confidentiality Agreement* form in the Documents section of this chapter).
7. The mediator will provide signed copies of the agreement, if an agreement is reached, to each party and the SDE. (See the *Mediation Agreement* form in the Documents section of this chapter).
8. ~~The mediator will be excluded from subsequent actions—complaint investigations, due process hearings, and legal proceedings. The mediator, afforded mediator privilege under Idaho law, will be excluded from participation in subsequent actions specific to the case mediated including complaint investigations, due process hearings, and legal proceedings. The mediator may mediate again for the parties if assigned by the SDE or if the mediated agreement calls for the mediator's potential future participation with the parties.~~

9. A due process hearing requested prior to mediation may be canceled by the requesting party as a result of the mediation agreement. The requesting party will immediately provide the hearing officer with documentation of the voluntary withdrawal of the due process hearing request. The mediator will immediately inform the SDE of the decision to withdraw the due process hearing request.
10. If for any reason the mediation does not end in a written agreement fails, the mediator will provide each party and the SDE with a statement certifying that ~~the mediation occurred but no agreement was reached~~ was unsuccessful.
11. Either party has the option to ~~make another request for~~ end the mediation at any time.

#### **D. SDE ~~Contracted~~ Mediators**

~~Idaho SDE contracted~~ mediators are ~~impartial and~~ trained in effective ~~mediation~~ conflict resolution processes, communication, negotiation, problem-solving skills, and in laws and regulations relating to the provision of special education and related services. ~~A mediator assists the parent and/or adult student and the district in resolving disputes. The SDE will select the mediator on a random, rotational, or other impartial basis from a list of highly qualified mediators. At times, the SDE may appoint two individuals to serve as co-mediators. While a mediator will not offer advice on a particular course of action, a mediator is required to help parties explore the soundness of any agreement. Mediators are assigned on a rotational basis with consideration for geographical location.~~

1. In all cases a mediator shall not:
  - a. be an employee of the SDE or district involved in the dispute;
  - b. have children enrolled in the district involved in the dispute; ~~or~~
  - c. have a personal or professional interest that ~~conflicts with~~ may affect the ability to remain impartial or neutral; or the person's mediator's objectivity.
  - d. be used if either party rejects the mediator based on a perceived inability to be neutral or impartial.
2. Additionally, if the parties have agreed to mediation following a due process hearing request: ~~a. co-mediators may not be used; and~~
  - b. ~~the mediator may not be an employee of any district or state agency providing services that are publicly funded under the IDEA 2004, Part B.~~

#### **E. Mediator Role**

3. The mediator has the responsibility to contact the parties to explain the mediation process, identify issues, and help the parties establish a date, time, and place to hold the mediation. The mediator also: ~~a. Establishes~~ establishes the ground rules for all parties to follow; ~~b. Guides~~ guides the process; ~~c. Encourages~~ encourages open and honest communication; ~~d. Ensures~~ ensures that each party is heard; ~~e. Rephrases~~ rephrases information and summarizes issues; and ~~f. Facilitates~~ facilitates the writing of the agreement.

**E**

#### **F. Mediation Timelines**

The SDE will appoint a mediator within three (3) business days of all parties agreeing to mediate a request for mediation. The mediation will be held in a location convenient to the parties involved, and every effort will be made to complete the process within twenty-one (21) calendar days.

**F**

#### **G. Confidentiality**

Discussions that occur during the SDE mediation process are confidential and cannot be used as evidence in any subsequent due process hearing or civil proceeding. The parties ~~Parties~~ in the ~~SDE~~ mediation process will be afforded the opportunity to review the confidentiality agreement and will be required to sign it a confidentiality pledge before mediation begins. (See the Mediation Confidentiality Agreement in the Documents section of this chapter).

**G**

#### **H. Mediation Agreement**

An agreement reached by the parties through ~~SDE~~ mediation shall be set forth in writing and is enforceable in ~~s~~State and ~~f~~Federal courts.

### **Section 3-4. Formal Complaints State Administrative Complaints**

#### **A. Filing Complaints Definition of State Administrative Complaint**

~~A formal complaint~~ State administrative complaints may can be filed ~~with the SDE~~ by any individual or organization ~~from Idaho or another state who believes alleging any violation the~~ district or other education agency has violated a requirement of ~~Part B of the Individuals with Disabilities Education Improvement Act, Part B of 2004 (IDEA 2004), including the an~~ alleged failure to comply with a previous due process hearing decision ~~rendered~~. State complaint procedures are outlined in IDEA regulations requiring, in part, a complaint must allege a violation that occurred no more than one year (365 days) prior to the date the complaint has been received. (See IDEA regulations 34 CFR§300.150 through 300.153). The SDE will accept a complaint received by mail, fax, or hand delivery. A complaint filed by email will not be accepted. Contact information is listed in the introductory paragraph to this chapter.

See the document section at the end of this chapter for “Procedures for Resolving Complaints.”

The filing party must provide a written complaint that includes the name and contact information of the complainant, the alleged violations, name, address, and attending school of child (if applicable), description and facts of the alleged problem to the extent known and available to the complainant at the time, and a proposed resolution. The party filing the complaint must forward a copy of the complaint to the district at the same time the party files the complaint with the SDE. The SDE has sixty (60) days to resolve the complaint via mediation or investigation and issue a final decision.

The SDE determines whether the complainant's submission meets the IDEA requirements for a complaint. If not, the SDE will notify the complainant in writing. The SDE will determine if an onsite investigation is necessary and will assign a complaint investigator to engage in neutral fact-finding if the complaint is accepted. A written decision will be provided to the complainant and the district addressing each allegation, findings of fact, conclusions, and any corrective actions ordered by the SDE.

#### **B. ~~SDE Complaint Procedures~~ Filing a State Administrative Complaint**

The SDE will accept a state administrative complaint received by mail, fax, hand delivery, or scanned and attached to an email with the complainant's signature included. The SDE will provide reasonable accommodations to individuals who need assistance in filing complaints. A state administrative complaint filed by a parent/adult student or public agency must be signed and must include all of the information indicated on the *Form for Filing a State Administrative Complaint* (located in the Document section of this chapter and on the SDE website).

~~A formal complaint can be made by any person or organization. The complaint shall be in writing and include the following information:~~

- ~~1. current date;~~
- ~~2. the name, address, and telephone number of the person making the complaint (or available contact information);~~
- ~~3. the signature of the person making the complaint;~~
- ~~4. if alleging violations regarding a specific student, the name and address of the student involved (or available contact information in the case of a homeless student or family);~~
- ~~5. the school and district or other education agency that is the subject of the complaint;~~
- ~~6. one or more statements (allegations) that the district has violated one or more requirements of Part B of the IDEA 2004;~~
- ~~7. the facts and/or a description of the events that support each allegation; and~~
- ~~8. the proposed resolution of the problem or the relief sought.~~

~~The complaint shall allege a violation that occurred not more than one year prior (365 days) to the date that the complaint is received. The SDE has a form available that may be used (see the Documents section of this chapter)~~

### C. Methods of Resolving State Administrative Complaints

The SDE will ~~offer~~ make every effort to resolve complaints in the least adversarial manner possible. Mediation in a case regarding an individual student will be offered to the disputing parties. If mediation is not accepted by the parties or fails to resolve the allegation(s) that gave rise to the complaint, then resolution of a ~~formal~~ state administrative complaint may be achieved through one or more of the following ~~four~~ processes:

1. **Verification of resolution:** Upon receipt of the initial complaint from the SDE outlining the allegations, the district may submit information to the SDE to document that one or more of the allegations of the complaint have been resolved. The SDE may also receive similar information from other sources.
2. **Corrective action plan (CAP):** The district may propose a CAP to address the allegations in the complaint. The SDE may accept, reject, or negotiate the proposed CAP, or require other corrective actions or timelines to ensure the district will achieve compliance for each allegation stated in the complaint. If this process is not successful, the SDE will conduct ~~a full~~ an investigation on unresolved allegations.
3. **Early complaint resolution (ECR):** The SDE or complaint investigator may propose the use of ECR to resolve the complaint. This approach, which shall be mutually agreed upon, provides the complainant and the district an opportunity to immediately resolve the issues prompting the complaint, even though the parties may not agree on particular allegations. The SDE Dispute Resolution Coordinator or an SDE-contracted complaint investigator will facilitate a resolution through the development of a written agreement to be signed by both parties. If this process is not successful the SDE will conduct ~~a full~~ an investigation on unresolved allegations.
4. **~~Full investigation~~ Investigation:** ~~If necessary, the~~ The SDE will appoint a complaint investigator to investigate the complaint by the case who will conducting a fact finding investigation which may include interviews and reviews reviewing of files, correspondence, and other information. An onsite investigation may occur as part of the investigation if necessary. The complaint investigator will submit SDE will write his or her a Final Report, including Findings of Fact, Conclusions, and, in coordination with SDE, identify appropriate ~~Corrective Actions~~ corrective actions, if required.

### D. State Administrative Complaint Procedures

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Upon receipt of a written state administration complaint, the SDE will adhere to ~~do~~ the following procedures.

1. The SDE, upon receipt of the state administrative complaint, will verify proper filing procedures were followed and determine if complaint meets established criteria, including sufficient allegations and facts within five (5) business days. The SDE will notify the complainant if a submission is insufficient to process as an administrative complaint. The SDE will give the complainant the opportunity to submit additional information about the allegations. whereas upon receipt would restart the timelines for completion Determine whether the complaint meets all of the required criteria. The SDE will notify the complainant if his or her a submission is insufficient as listed in with respect to Section A, above.
2. The SDE will notify the district (specifically the superintendent, the special education director, and the school board chair), that the complaint has been received and what, if any, allegations have been accepted for investigation within ten (10) business days of the SDE receiving the complaint. The school district is given an opportunity to respond to the complaint and may initiate within fourteen (14) day of receipt of the complaint a corrective action proposal (CAP) to resolve all or some of the allegations in the complaint, subject to SDE approval. At the complaint investigator's discretion, the timeline for a CAP may be extended, or the complaint investigation may progress until a CAP has been accepted by the SDE. The complaint investigator is responsible for managing the timelines of the investigation and may submit a final report at any point within the 60-day timeline. Notify the district that a complaint has been received, and offer both parties SDE mediation. Parents and/or adult students shall receive a copy of the Procedural Rights statement.
3. Mediation can be requested by either party at any time and must be offered for complaints regarding an individual student. While parties are generally encouraged to resolve complaints collaboratively, choosing not to participate in mediation will not be considered relevant in an investigation. If parties opt for mediation, it will not delay the timelines required for resolving a complaint unless all parties agree.
4. The SDE will provide the parent/adult student a copy of the Procedural Safeguards Notice.
5. ~~4. Give the complainant the~~ Complainants will be given opportunity to provide additional information about the allegations, either orally or in writing.

The SDE will set aside all or any part of the written complaint that is being addressed in a pending due process hearing or a hearing decision which has already been rendered until the conclusion of the hearing. Any issue not a part of a due process action will be resolved following the SDE state administrative complaint procedures and timelines. 3. Set aside all or any part of the written state administrative complaint that is being addressed in a due process hearing until the conclusion of the hearing.



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- ~~Any issue that is not a part of the due process action will be resolved using the SDE complaint procedures and timelines. If hearing officer's decisions are not adequately addressed by the district, the SDE will investigate.~~
6. The SDE shall investigate a complaint alleging that a final hearing officer decision is not being implemented by a public agency.
  7. The SDE will issue a final report to the district superintendent, board chairperson, special education director, and complainant, that shall include but is not limited to the findings of fact, conclusions, and corrective action(s) for each allegation within sixty (60) calendar days of receipt of sufficient complaint (see D.1). This time period may be extended, but only under exceptional circumstances, which shall be documented by the SDE, or complainant and public agency agree to extend the time to engage in mediation or other alternative dispute resolution procedures. ~~5. Resolve the complaint and issue a Final Report that includes the findings of fact, conclusions, and resolution, for each allegation within 60 calendar days of receipt of the complaint. This time period may be extended, but only under exceptional circumstances, which shall be documented by the SDE. The resolution will state:~~
    - a. how to remedy any denial of services, which may include the award of compensatory services, monetary reimbursement or other corrective action as appropriate to the needs of the student; and
    - b. the future provision of services to be considered by an IEP team for the student with a disability, if such clarification is needed when appropriate; and
    - c. the provisions of technical assistance, if needed.
  9. The SDE will ensure the district takes corrective action if it is determined that the district was out of compliance through technical assistance activities, negotiations, and/or corrective actions no later than one year after the identification of non-compliance. The final report cannot amend a student's IEP. ~~6. Ensure the district takes corrective action if it is determined that the district was out of compliance.~~
  10. The SDE ensures noncompliance has been corrected and verifies through review of documentation or interviews, or both, the corrective actions were implemented no later than one year (365 days) after the determination of noncompliance. If necessary, the SDE must use appropriate enforcement mechanisms such as the provision of technical assistance, conditions on funding, a corrective action, an improvement plan, and/or withholding funds, in whole or in part.

## Section 4 ~~5~~. Due Process Hearings

### A. Definition

~~A due process hearing request involves an allegation or a series of allegations filed with the SDE for a due process hearing may be made by either a parent and/or adult student parent/adult student or the district on issues relating to the identification, evaluation, educational placement, and the provision of FAPE. A parent and/or adult student or district may file a request for hearing with the SDE and the non-requesting party. The request shall be mailed, faxed, or hand delivered. When the request is filed with the district, the parent and/or adult student shall send copies to the Dispute Resolution Coordinator at the SDE.~~

~~All applicable timelines for due process hearing and resolution sessions will start when the request has been filed with the other party and the SDE. The due process hearing is overseen by an SDE appointed hearing officer. At the due process hearing, the parent/adult student present evidence, cross examine witnesses, and present their case to an impartial hearing officer. The hearing officer renders a decision on the merits of the issues relating to the due process hearing.~~

~~The due process hearing request must allege a violation that occurred not more than two (2) years before the date the parent/adult student or public agency knew or should have known about the alleged action that forms the basis of the due process hearing request, subject to the exceptions described later in this section. The SDE offers mediation in an effort to resolve issues and parties may request mediation at any time. If mediation is rejected by either party, the due process hearing timelines will be in effect.~~

### B. Due Process Hearings and Expedited Due Process Hearings ~~Due Process Hearing Request from Parent and/or Adult Student~~

Idaho's due process system has two settings for due process ~~types of~~ hearings, a regular due process hearing and an expedited due process hearing:

1. A regular due process hearing is an administrative hearing to resolve disputes on any matter related to the identification, evaluation, educational placement, and the provision of FAPE.
2. An expedited due process hearing is as an administrative hearing to resolve disputes concerning discipline and/or placement related to discipline occurring within 20 school days of the request, with a decision rendered within 10 school days of the hearing.

### C. Filing a Due Process Hearing

Due process hearing requests must include a complete and signed copy of the *Due Process Hearing Request Form* (located in the Documents section at the end of this chapter) or a signed document providing, in the same order, all of the general information, issue(s), and resolution(s)

information required in the *Due Process Hearing Request Form*. The SDE will provide reasonable accommodations to individuals who need assistance in filing a written request.

A parent/adult student or public agency (or their attorney authorized to practice law in the state of Idaho) filing a due process hearing request must provide the due process hearing complaint to the other party and to the SDE Office of Dispute Resolution. The request shall be mailed, faxed, hand delivered, or scanned and attached to an email with a signature of the filing party. All applicable timelines will start when the request has been received by the non-requesting party.

1. Due Process Hearing Request from Parent/Adult Student: A due process hearing may be requested on behalf of a student by a parent, adult student or by an attorney, properly licensed in Idaho, representing the student.

1.

- a. A due process hearing shall be initiated within two (2) years of the date the ~~parent and/or adult student~~ parent/adult student knew or should have known of the issues giving rise to the allegation(s). The two-year timeline will not apply if the ~~parent and/or adult student~~ parent/adult student was prevented from requesting a hearing due to specific misrepresentations or the withholding of information by the public agency required to be provided by the IDEA.

2.

- b. A due process hearing can be initiated regarding issues pertaining to identification, evaluation, educational placement, or the provision of FAPE if:  
~~a. the district proposes to initiate or change any of these matters; or if b. the~~  
district refuses the parent's and/or adult student's parent's/adult student's  
request to initiate or change any of these matters.

~~See the Documents Section of this chapter for a Due Process Hearing Request form. The parent and/or adult student, or his or her attorney filing a due process hearing request shall forward a copy to the SDE and the district. The SDE will provide reasonable accommodations to individuals who need assistance in filing a written request.~~

### **C. Due Process Hearing Request by a District**

2. Due Process Hearing Request by a District: If the district initiates a hearing request the district must inform the parent/adult student and the SDE. A district may initiate a due process hearing within two years of the dispute in an attempt to accomplish one or more of the following:

1.

- a. override a parent's/adult student's refusal of consent for an initial evaluation or re-evaluation, or release of information;

2.

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- ~~3.~~
  - b. override a parent's/adult student's written objection to an IEP program change, an educational placement change, or disciplinary actions when there is an imminent threat to safety;
- ~~4.~~
  - c. ask a hearing officer to place a student in an Interim Alternate Education Setting (IAES) when there is substantial evidence that maintaining the current educational placement is likely to result in injury to the student or others; ~~or~~
  - d. request that a hearing officer determine whether an evaluation conducted by the district was appropriate or whether an evaluation obtained by a ~~parent and/or adult student~~ parent/adult student meets the criteria for a publicly funded Independent Educational Evaluation (IEE); or
  - e. if a parent/adult student disagrees with an IEP or placement change by the district, the parent/adult student may file a written objection to the IEP or to all or parts of the proposed change in writing within ten (10) calendar days of receiving written notice of the proposed change, the proposed change cannot be implemented. If resolution through additional IEP meetings or mediation fails, the district may request a due process hearing to obtain a hearing officer's decision regarding the proposed change. The written objection cannot be used to prevent the public agency from placing a student in an Interim Alternative Educational Setting (IAES) in accordance with the IDEA.
  - f. A district may request a hearing to determine if a proposed IEP is appropriate even in the parent/adult student has not filed a formal objection.

~~If the district initiates a hearing, the district will inform the parent and/or adult student parent/adult student and the SDE.~~

**D. Hearing Officer Appointment**

- 1. The SDE must appoint a hearing officer within ten (10) calendar days of receiving the due process hearing request or within five (5) business days of an expedited hearing. Hearing officers are selected by SDE from a list of specially trained and impartial professionals. A list of qualifications for each hearing officer is kept by the SDE.
- ~~2. A Hearing Officer is Assigned~~
  - ~~a. Within 10 calendar days of a request for a hearing, an impartial hearing officer will be assigned by the SDE. The SDE maintains a list of trained hearing officers, along with their qualifications, and assignments are made on a rotational basis.~~
  - ~~b.~~
    - 2. The hearing officer ~~must~~ may not be a member of the district school board, be an employee of the school district, or an employee of the SDE.

3. The hearing officer must not have an individual having any a personal or professional interest that would conflicts with his or her the objectivity in the required of a hearing officer, or a member of the board of trustees of the district.
4. The hearing officer must be specially trained in conducting due process hearings, possess knowledge and understanding of the provisions of Idaho law, the IDEA, and judicial interpretations, and ability to conduct hearing and render and write decisions with appropriate, standard legal practice.
5. ~~c.~~ The district is responsible for fees and will pay for all actual expenses incurred by the hearing officer and for the cost of a court reporter in establishing a verbatim record transcript of the hearing at state reimbursement rates. The hearing officer will be compensated at rates set by the SDE.

**~~D. Contents of a Request for a Due Process Hearing~~**

~~A request for a due process hearing shall be made in writing and shall include the following information:~~

- ~~1. the current date;~~
- ~~2. the student's name, address (or available contact information in the case of a homeless student), and school district;~~
- ~~3. the signature of the individual make the request for a due process hearing;~~
- ~~4. a description of the nature of the problem, including supporting facts; and~~
- ~~5. a proposed resolution of the problem or the relief sought.~~

**~~E. Actions for Due Process Hearings Policies~~**

- ~~1. A Due Process Request is Filed~~
  - ~~a. A request may be filed by either party.~~

After a due process request is filed by the parent/adult student or the district, the following procedures will be followed.

1. The SDE offers mediation as a voluntary option to both parties. Parties may request mediation at any time. Choosing mediation shall not alter or delay the timeline of the due process hearing.
2. The receiving party may challenge the sufficiency of the due process hearing request within fifteen (15) days of the receipt of the hearing request by filing a written sufficiency objection with the hearing officer. Challenges to the sufficiency of the due process hearing complaint must be in writing and provided to all parties. The hearing

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- officer shall render a decision regarding the sufficiency of the allegation(s) within five (5) calendar days and immediately notify the parties of the decision in writing.
- b. ~~Either party may challenge the sufficiency of the due process hearing request within 15 days of the receipt of the hearing request. The hearing officer shall render a decision regarding the sufficiency within five calendar days and immediately notify the parties of the decision in writing.~~
- a. If the complaint is found not to be sufficient, the party may amend its due process complaint if the other party consents in writing to the amendment and has the opportunity to resolve the complaint through a resolution meeting, or the hearing officer grants permission to amend no later than five (5) days before the due process hearing begins.
- b. Timelines for amended due process hearings begin again on the filing date of the amended request.
3. If the district has not previously sent written notice (as outlined in IDEA) regarding the subject matter in the ~~parent's and/or adult student's~~ parent's/adult student's complaint, the district ~~will~~ must, within ten (10) calendar days of receiving the ~~request~~ complaint, send a the response to the parent and/or adult student ~~parent/adult student~~ a letter ~~response that includes all the components of written notice~~ explaining the reasons behind their actions, options considered, evaluations conducted, and other factors relevant to the district's response, in accordance with IDEA prior written notice requirements.
- ~~c. The district superintendent has the responsibility for informing the district's board of trustees of any request for a hearing.~~
- ~~d.~~
4. The district shall inform a parent and/or adult student ~~parent/adult student~~ of any free or low-cost legal or other relevant services available to him or her and provide a copy ~~of or~~ of the Procedural Safeguards if a due process hearing is requested or if the ~~parent and/or adult student~~ parent/adult student requests such information.
3. ~~SDE Mediation is Offered~~
- ~~The SDE is required to offer mediation as an alternative dispute resolution mechanism to the involved parties.~~
4. ~~Response to a Due Process Request~~
- a. ~~The other party shall file a response with 10 calendar days addressing the issues raised.~~

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- ~~— Either party may amend the request, upon obtaining written consent from the other party or as granted by the hearing officer, at least 5 calendar days prior to the hearing. If the request is amended, timelines for resolution and resolving the issues begin again as of the date of the amended request.~~

5. Within fifteen (15) days of receiving the parent's/adult student's due process hearing request, the district convenes a pre-hearing resolution session, unless both parties agree in writing to waive the resolution meeting, both parties agree to go to mediation, or the district initiates the hearing.

~~5. Pre-hearing Resolution Session~~

- ~~a. A resolution session will be held within 15 calendar days of a request for a due process hearing unless:~~

~~(1) Both parties agree in writing to waive the resolution meeting.~~

~~(2) Both parties agree to go to mediation.~~

~~(3) The district initiates the hearing. The IDEA 2004 requires the resolution session only if the parent parent/adult student has requested the due process hearing.~~

~~b.~~

- ~~a. A "resolution team" resolution meeting includes the parent and/or adult student parent/adult student, a representative of the district who has decision-making authority, and relevant members of the IEP team who have specific knowledge of the facts identified in the request for a due process hearing as determined by the parties.~~

- ~~b. The district's attorney shall not attend the resolution session unless the parent/adult student will be accompanied by an attorney.~~

- ~~c. The SDE will provide a SDE contractor specially trained in facilitating a resolution session or a SDE mediator, if requested. Either process requires approval by both parties. Note: SDE Facilitation may be requested with the approval of both parties.~~

- ~~d. e. The purpose of the meeting is for the parent and/or adult student parent/adult student to discuss the due process hearing request, and the facts that form the basis of the request, so that the district has the opportunity to resolve the dispute.~~

~~d.~~

- 1) If a resolution is reached regarding the issues raised in the request for a due process hearing, the district representative and parent and/or adult student parent/adult student will sign settlement agreement, a legally binding document enforceable in State and Federal court. The parties

will immediately forward to the hearing officer signed documentation of the voluntary withdrawal of the due process hearing complaint by the requesting party.

- 2) Either party may void this agreement within three (3) business days of signing the agreement.
  - e. A due process hearing will be scheduled if no resolution is reached within thirty (30) calendar days of receiving the request for a due process hearing.
  - f. If the district is unable to obtain the participation of the ~~parent and/or adult student~~ parent/adult student after reasonable efforts have been made and documented, at the conclusion of the thirty (30) calendar day period, the district may request that the hearing officer dismiss the ~~parents~~ parent's/adult student's due process hearing request.
  - g. A ~~parent and/or adult student~~ parent/adult student may request an immediate due process hearing from the hearing officer if the district has not scheduled or participated in a resolution session within fifteen (15) days of the request.
  - h. The district must report to the SDE and to the hearing officer when the resolution meeting is to be held, or documentation indicating it was waived by both parties, or documentation of attempts to reach the other party, within fifteen (15) days of SDE receiving the due process hearing request.
6. The ~~forty-five (45)~~ day timeline for the due process hearing request starts the day after one of the following events:
- a. both parties agree in writing to waive the resolution meeting;
  - b. after either the mediation or resolution meeting starts but before the end of the thirty (30) day period, the parties agree in writing that no agreement is possible;
  - c. both parties agree in writing to continue the mediation at the end of the thirty (30) day resolution period, but later, the ~~parent and/or adult student~~ parent/adult student or public agency withdraws from the mediation process;  
or
  - d. the district files a hearing request.

All of the above events must be documented, with dates of determination, and provided to the SDE and assigned hearing officer immediately.



## **F. The Due Process Hearing**

### **1. Hearing Preparation**

- a. ~~A parent and/or adult student~~ parent/adult student will be allowed to inspect and review reports, files, and records pertaining to the student ~~not less than 5 business days~~ prior to a resolution session or due process hearing. A district may charge a fee for copies of records if the fee does not effectively prevent a ~~parent and/or adult student~~ parent/adult student from exercising his or her right to inspect and review those records. The district may not charge a fee to search for or retrieve records.
- b. Not less than five (5) business days prior to a due process hearing, each party will disclose to all other parties: ~~1. Evaluations completed by that date; and~~ 2. Recommendations based on those evaluations intended to be used at the hearings; ~~3. Copies of exhibits which will to be introduced;~~ and a list of witnesses each party intends to call at the hearing.
- c. The hearing officer will provide notification as to the time and place of the due process hearing to the ~~parent and/or adult student~~ parent/adult student, district officials, and the SDE. The hearing shall be conducted at a time and place reasonably convenient to the ~~parent and/or adult student~~ parent/adult student.
- d. Parties shall cooperate with the hearing officer in any business or communication and the planning for a location, date and time for the hearing.

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### **2. The Due Process Hearing**

- a. The hearing officer will preside over and conduct the proceedings in a fair and impartial manner, permitting all parties an opportunity to present their information and opinions ~~pursuant to the Idaho Administrative Procedure Act (IDAPA) and the IDEA 2004 requirements.~~ Due process hearings shall be conducted pursuant to the *Idaho Rules of Administrative Procedure of the Attorney General* (IDAPA), *Individuals with Disabilities Education Act* (IDEA) requirements, and the *Idaho Special Education Manual*. In case of any conflict between IDAPA and the IDEA, the IDEA shall supersede. IDAPA rules shall supersede the *Idaho Special Education Manual*.
- b. ~~A parent and/or adult student~~ parent/adult student and district personnel may be accompanied and advised by legal counsel properly licensed in Idaho ~~and other persons with special knowledge or training about students with disabilities.~~

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- c. ~~A parent and/or adult student~~ parent/adult student has the right to open the hearing to the public and to have the student who is the subject of the hearing present.
- d. ~~Only a parent and/or adult student, a district, and their respective attorneys~~ Each party has have the right to present evidence, to compel the attendance of witnesses and the production of documents, and to confront and cross examine witnesses.
- e. New issues (issues not in the original due process request) may not be raised at the hearing unless agreed to by the other party.
- f. Any party may prohibit the introduction of any evidence at the hearing that was disclosed less than five (5) business days before the hearing.
- g. During the hearing the district will provide reasonable accommodations as required by federal regulations. Disputes will be referred to the SDE for resolution.
- h. A record of the hearing will be made. The record will be a written verbatim transcript. The ~~parent and/or adult student~~ parent/adult student may choose an electronic verbatim record. The district will pay the transcript costs, and a copy of the transcript will remain with the SDE. The ~~parent and/or adult student~~ parent/adult student and district personnel have the right to obtain a copy of the record upon formal request.

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3. Decision of the Hearing Officer

- a. The decision of the hearing officer will be based solely on presentations made at the due process hearing.
- b. The decision made by the hearing officer will be made on substantive grounds based on a determination of whether a student received FAPE.
  - 1) In matters alleging a procedural violation, a hearing officer may find that a student did not receive FAPE only if there is evidence that the procedural inadequacies:
    - i. impeded the student's right to FAPE;
    - ii. significantly impeded a ~~parent's and/or adult student's~~ parent's/adult student's opportunity to participate in the decision-making process; or
    - iii. caused a deprivation of educational benefit.

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- 2) If a hearing officer finds that there is a procedural deficiency that did not deny FAPE, he or she may order the district to comply with the procedural requirements. A hearing officer may order a district to comply with procedural requirements, regardless of whether a district's failure in this area did or did not result in a denial of FAPE.
- c. The decision will include findings of fact and conclusions of law. In addition, the decision shall include an order of relief, if appropriate.
- d. ~~The hearing officer's written decision shall be available within 45 calendar days from the date of the request for a hearing. The 45-calendar day timeframe begins when the written request is actually received by the district or the SDE, whichever is earlier.~~ The hearing officer's written decision shall be mailed within forty-five (45) calendar days from the date both parties agreed in writing to waive the resolution meeting, or both parties agreed to go to mediation, or the date the district initiated the hearing. The hearing officer may grant an extension of the forty-five (45) day period upon the request of a party. The hearing officer shall issue a written decision in response to each request.
- e. The findings of fact and decision shall be sent to the ~~parent and/or adult student~~ parent/adult student at no cost. Copies will also be mailed to the district superintendent, the SDE, and representatives of the district.
- f. ~~After deleting personally identifiable information, the SDE will transmit the decision to the Special Education Advisory Panel (SEAP) and make the decision available to the public upon request.~~
- g. A hearing officer's decision will be enforceable in State and Federal court. It will be implemented not later than fourteen (14) calendar days from the date of issuance unless:
  - 1) the decision specifies a different implementation date; or
  - 2) either party appeals the decision by initiating civil action in State or Federal District court: within applicable appeal periods.
- h. Nothing in this section can be interpreted to prevent a ~~parent and/or adult student~~ parent/adult student from filing a separate due process hearing request on an issue separate from the request already filed. The SDE may consolidate multiple hearing requests involving the same IEP.
- i. Stay Put

- 1) During the pendency of any due process hearing, the student shall remain, or “stay put,” in his or her current educational placement unless the district and ~~parent and/or adult student~~ parent/adult student agree otherwise.
- 2) The stay put placement continues during any subsequent appeals unless a hearing officer agrees with a ~~parent and/or adult student~~ parent/adult student that a change of placement is appropriate, in which case, the placement identified in the hearing officer’s decision becomes the stay-put placement.
- 3) If the dispute involves an application for initial admission to public school in Idaho, the student, with the written consent of his or her parent, shall be placed in the public school program until the proceedings are completed.
- 4) “Stay put” does not apply when a student is transitioning from Part C (the Infant/Toddler Program) to Part B services in Idaho. Following the development of an IEP or an individual family service plan (IFSP), if an educational placement dispute arises involving a student transitioning from Part C to Part B, the student cannot “stay put” in Part C:
  - i. With written consent of the parent, the student shall be placed in the public school until completion of all the hearing proceedings.
  - ii. If the parent does not give written consent, the student will not receive services until completion of the hearing proceedings.
  - iii. If the student is eligible for special education and related services, and the parent consents, then the district shall provide those special education and related services which are not in dispute.

### **Section 56. Expedited Due Process Hearings**

~~A request for an expedited due process hearing may be made by either a parent and/or adult student or the district. The request should be mailed, faxed or hand delivered to the Dispute Resolution Coordinator at the SDE. A request for an expedited due process hearing filed by email will not be accepted. Contact information is listed in the introduction to this chapter.~~

## A. Definition

An expedited due process hearing is defined as an administrative hearing to resolve disputes concerning discipline occurring within twenty (20) school days of the request, with a decision rendered within ten (10) school days of the hearing.

## B. Filing an Expedited Hearing Requests

Parties filing expedited due process hearing requests must include a complete and signed copy of the *Expedited Due Process Hearing Request Form* (located in Documents section of this chapter) or a signed document providing, in the same order, all of the general information, issue(s), and resolution(s) information required in the *Expedited Due Process Hearing Request Form*. The SDE will provide reasonable accommodations to individuals who need assistance in filing a written request.

1. A district may request an expedited hearing if the district believes maintaining the current placement or returning the student to the prior placement is substantially likely to result in injury to the student or others.
2. A ~~parent and/or adult student~~ parent/adult student may request an expedited hearing if:
  - a. he or she disagrees with a determination that the student's behavior was not a manifestation of the disability; or
  - b. he or she disagrees with the district's discipline decision, which resulted in a change of placement.

See Section 5D of this chapter for additional information regarding placement during a hearing. A parent/adult student or district filing an expedited due process hearing request must provide, in a confidential manner, the due process complaint and request for hearing to the other party. The request shall be mailed, faxed, or hand delivered (electronic copies are not accepted). The party filing an expedited due process hearing must be able to show proof of receipt of the expedited due process hearing request by the other party. Additionally, when the request is provided to the non-requesting party, the party filing the request shall simultaneously send a written copy to the Dispute Resolution Coordinator at the SDE by mail, fax, hand delivery, or scanned and attached to an email with a signature of the filing party. All applicable timelines for expedited due process hearing will start when the request has been received by the non-requesting party.

## C. The Expedited Hearing Process and Decisions

An expedited hearing will be conducted in a fair and impartial manner. Guidelines and proceedings will be the same as those in a regular due process hearing, except for the following changes:

1. The SDE will appoint a hearing officer within ~~2~~ five (5) business days of a request.
2. A resolution session shall occur within seven (7) days of receiving a due process hearing request unless the parties agree in writing to waive the resolution session or go to mediation.
3. A due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within fifteen (15) days of the receipt of the expedited due process hearing request.
4. There is no process for challenging the sufficiency of the due process hearing request in an expedited case.
4. Any party may prohibit the introduction of any evidence at the hearing that was not disclosed at least five (5) ~~2~~ business days before the hearing.
5. The hearing shall occur within twenty (20) school days of the request, with a decision rendered within ten (10) school days of the hearing. ~~A written decision will be mailed to both parties. and no extensions may be granted by the hearing officer.~~
6. A written decision will be mailed to both parties by the SDE.
8. A party may appeal the decision in an expedited due process hearing in the same way as ~~they may~~ allowed for decisions in other original due process hearings.

#### **D. Placement During an Expedited Hearing**

When a hearing has been requested by either the ~~parent and/or adult student~~ parent/adult student or the district regarding placement decisions, the student shall “stay put” during the pendency of the hearing. In relation to disciplinary proceedings, stay put means:

1. ~~The~~the student will remain in the IAES until the timeline for the disciplinary action expires or the hearing officer renders a decision, whichever occurs first; and/or
2. ~~Upon~~upon expiration of the IAES placement, the student will be placed in the setting he or she was in prior to the IAES. However, if district personnel maintain that it is dangerous for the student to return to that placement, the district may request an expedited hearing to continue the IAES for up to an additional forty-five (45) school days. This procedure may be repeated as necessary.

If the hearing officer ~~finds for~~ findings are in favor of the ~~parent and/or adult student~~ parent/adult student, the change of placement cannot occur, ~~and the~~ The IEP team will need to determine the extent of services ~~that are~~ appropriate to meet the student’s individual needs, as well as ~~and to~~ address the student’s behavior. If the hearing officer finds ~~in favor of~~ for the district, the district may use the same disciplinary procedures, including expulsion, ~~as it uses~~ available for any other

student, except that FAPE ~~shall~~must be provided according to the requirements in Chapter 12, Section 3.

If an educational placement dispute arises involving a child transitioning from Part C to Part B, the child cannot remain in Part C services when he or she is over the age of three. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services, then the school district shall provide those special education and related services that are not in dispute between the parent and district until completion of all the hearing proceedings. If the parent does not give written consent for the special education or related services, the student will not receive services until completion of the hearing proceedings.

### **Section ~~6-7~~. Appeals and Civil Action**

~~1.—An appeal to state court shall be filed within twenty-eight (28) days from the date of issuance of the hearing officer's decision; or, an appeal to federal district court shall be filed within forty-two (42) calendar days from the date of issuance of the hearing officer's decision.~~

~~Either party shall exhaust all dispute resolution procedures available under the IDEA 2004 prior to filing action in civil court. However, nothing in the IDEA 2004 restricts or limits the rights, procedures, and remedies available under the U.S. Constitution, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, or other Federal laws protecting the rights of children with disabilities. This means either party may have remedies available under these laws that overlap with the IDEA 2004. To obtain relief under those other laws, either party shall first use the available dispute resolution procedures under the IDEA 2004 before going directly into court.~~

~~2.~~

A party must exhaust administrative remedies before initiating a civil action under IDEA unless otherwise determined by the court. However, nothing in the IDEA 2004 restricts or limits the rights, procedures, and remedies available under the U.S. Constitution, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, or other Federal laws protecting the rights of children with disabilities.

### **Section ~~7-8~~. Attorney Fees**

A district court will have jurisdiction in the awarding, determination, or prohibition of attorney fees. The court may:

1. award reasonable attorney fees as part of the costs to the prevailing party; and
2. determine the amount of attorney fees, using prevailing rates in the community in which the action occurred, for the kind and quality of services provided. No bonus or multiplier may be used in calculating the amount of fees awarded.

Funds under Part B of the IDEA ~~2004~~ cannot be used by the district to pay any attorney fees or costs of a party related to an action or proceeding, such as deposition, expert witnesses, settlements, and other related costs. However, Part B funds may be used to pay hearing officer fees or the costs of a meeting room to conduct the hearing.

#### **A. Prohibition of Attorney Fees**

1. Attorney fees may not be awarded:
  - a. for legal representation at an IEP meeting, including a resolution session, unless such a meeting is convened as a result of a due process hearing or a judicial action; or
  - b. for mediation that is conducted prior to a request for a due process hearing.
2. Attorney fees may not be awarded and related costs may not be reimbursed in any action or proceeding for services performed subsequent to the time of a written offer of settlement to a ~~parent and/or adult student~~ parent/adult student if:
  - a. the district makes an offer at least ten (10) calendar days before a due process hearing or a civil proceeding begins;
  - b. the offer is not accepted by the ~~parent and/or adult student~~ parent/adult student within ten (10) calendar days after it is made; and
  - c. a court or due process hearing officer finds that the relief obtained by the ~~parent and/or adult student~~ parent/adult student is not more favorable to the ~~parent and/or adult student~~ parent/adult student than the offer of settlement.

#### **B. Exception to the Prohibition of Attorney Fees**

An award of attorney fees and related costs may be made to a ~~parent and/or adult student~~ parent/adult student who is a prevailing party and who was substantially justified in rejecting the district's settlement offer.

#### **C. Reduction in the Amount of Attorney Fees**

A court may reduce an award for attorney fees under any of the following circumstances:

1. ~~During~~ during the course of the action or proceeding, the ~~parent and/or adult student~~ parent/adult student or his or her attorney unreasonably extended the final resolution;;
2. ~~The~~ the amount of the award unreasonably exceeds the prevailing rate in the community for similar services by attorneys of reasonably comparable skills, reputation, and experience;;



3. ~~The~~the time spent and legal services rendered were excessive considering the nature of the action;
4. ~~The~~the attorney representing the ~~parent and/or adult student~~ parent/adult student did not provide the information required in a due process hearing request; ~~and/or~~
5. a party represented him or herself, or his or her child.

**D. Exception to the Reduction of Attorney Fees**

The amount of attorney fees will not be reduced if the court finds that the district or SDE unreasonably extended the final resolution of the action or proceeding.

**E. Special Provisions Regarding Attorney Fees**

1. A district or SDE that prevails may seek attorney fees from a court against the ~~parent's and/or adult student's~~ parent's/adult student's attorney if the action is deemed frivolous, unreasonable, without foundation or prolongs the litigation.
2. A district or SDE that prevails may seek attorney fees from a court against the parent's/adult student's attorney or the ~~parent and/or adult student~~ parent/adult student if the hearing request was presented for improper purposes such as to harass the district, cause unnecessary delay or needlessly increase the cost of litigation.

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**Documents**

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Special Education Mediation in Idaho

**MANAGING PARENT AND SCHOOL CONFLICT  
THROUGH EFFECTIVE COMMUNICATION**

If conflict occurs between a parent and school personnel regarding the educational program of a special education student, mediation provides a non-adversarial alternative to resolve the dispute.

**Mediation** is a structured, voluntary process in which an impartial third party, a mediator, helps parents and school personnel who are experiencing conflict to reach a suitable agreement. Mediation builds positive working relationships, encourages mutual understanding, and helps parents and school personnel focus on their common interest—the student.

***Section 1. Mediation in Idaho***

The mediation process:

May resolve disputes regarding the identification, evaluation, educational placement, or related services for students with disabilities;

Clarifies areas of agreement and disagreement; and

Fosters better relationships between parents and schools

***Section 2. Requesting Mediation***

An oral or a written request for mediation may be made to the SDE by a parent and/or adult student with a disability, a legal guardian, a surrogate parent, or the district. In addition, the SDE will encourage parents and districts to participate in mediation when it seems appropriate. Following a request for mediation, the SDE will make every effort to complete the process within 21 days.

A request for mediation:

1. Is appropriate when parents and/or adult students and schools are unwilling or unable to modify their position without outside assistance;
2. May occur when parents and/or adult students and schools, after making a good faith effort, face an impasse in attempting to resolve the conflict; and
3. Can be scheduled prior to, or concurrent with, a request for a due process hearing.

***Section 3. Proposed Mediation by the SDE***

The SDE will offer mediation to resolve a dispute between parents and the district:

1. When there is a formal request for a due process hearing; and
2. At any other time the SDE deems the use of mediation appropriate.

***Section 4. Appointment of a Mediator***

The SDE maintains a list of qualified mediators. When both parties in a dispute agree to mediate, every attempt will be made by the SDE to appoint a mediator within 3 business days of the request. A mutually agreed upon time, date, and place of the mediation will be coordinated by the mediator.

If a due process hearing has been requested, the SDE will use a rotation list to select the mediator or both parties will be involved in and agree with the selection of the mediator.

If a due process hearing has been requested, the mediator may not be an employee of any district or state agency providing publicly funded services under the IDEA 2004 and co mediators may not be used.

***Section 5. The Mediator***

A mediator is a neutral third party trained in communication, problem solving and negotiation skills, and specific mediation techniques who acts as a facilitator to assist parents and/or adult students and schools in resolving conflicts. The mediator:

1. Educates the parties about the mediation process.
2. Establishes the ground rules for all parties to follow.
3. Guides the process.
4. Encourages open and honest communication.
5. Ensures that each party is heard.
6. Rephrases information and summarizes issues.
7. Facilitates the writing of the agreement.

***Section 6. Roles of Parents and Schools***

It is in the best interest of all parties, including the student, to explore mediation as a means to a resolution of the conflict. Parents and/or adult students and school personnel play a very important role in mediation. As active participants, each party can help design a mutually agreeable solution.

***Section 7. Prior to the Mediation***

The SDE will provide:

- ~~1. Notification to the disputing parties of the mediator appointed.~~
- ~~2. A copy of the *Procedural Safeguards Notice* to each party.~~
- ~~3. A copy of the “Confidentiality Pledge” to the parent, district, and mediator. The parties should review the pledge, come to the mediation with any questions regarding confidentiality, and be prepared to sign the pledge.~~

The mediator will:

- ~~1. Contact the parties to explain the mediation process, identify issues, and help the parties establish a date, time, and place to hold the mediation.~~
- ~~2. Assist in determining who will attend the mediation session and inform the parties that participants need to be knowledgeable about the student and of available resources or services the student may need.~~
- ~~3. Advise the SDE of the names of all parties who will participate in the mediation session.~~

The parent and/or adult student and district will:

- ~~1. Determine who will attend the mediation session and advise the mediator of their choices.~~
- ~~2. Advise the mediator that the individual(s) with authority to commit resources and make final resolution decisions will participate in the mediation session.~~

### ***Section 8. Preparing for the Mediation Session***

The following guidelines can help participants prepare for the mediation session:

- ~~1. Keep your schedule free and be willing to give at least one full day to the mediation process.~~
- ~~2. Put aside personality conflicts and center on the educational interests of the student.~~
- ~~3. Approach mediation in good faith.~~
- ~~4. Be open, honest, and willing to listen.~~
- ~~5. Be familiar with all documents related to the dispute, including the Individualized Education Program (IEP).~~

- ~~6. Organize your information and materials.~~
- ~~7. Set goals you would like to achieve during the session.~~
- ~~8. Be open to alternatives.~~

### ***Section 10. The Mediation Session***

Every mediator has his or her own personal style of conducting a mediation. Participants should feel free to ask questions and seek clarification on any issue during the session. The mediation may include the following stages:

- ~~1. **Introduction:** The mediator will explain the process, set the ground rules for all parties, respond to questions, and encourage the parties from the onset to deal with issues—not personalities.~~
- ~~2. **Identification of issues:** Each party will have an opportunity, without interruption, to identify issues and share information. The mediator may seek additional information or summarize the issues.~~
- ~~3. **Expression of interests:** At this stage, the mediator helps the parties identify their interests (those factors underlying their issues). Goals, needs, beliefs, hopes, and fears are expressed, explored, and clarified.~~
- ~~4. **Caucus:** On occasion, issues and underlying interests may not be clear. Opportunity is provided for each party to “caucus” with the mediator for the purpose of sharing information or seeking clarification about the issues. The mediator will not disclose information from caucus sessions without consent.~~
- ~~5. **Recess:** A break may be requested by any participant during the session. This time provides an excellent opportunity for all parties to gather their thoughts and absorb what has transpired.~~
- ~~6. **Creating alternatives:** After the basic issues and interests have been identified, discussed, and clearly understood by all parties, the mediator will assist the parties in identifying or developing options to resolve the conflict. At any time during an open session or in a caucus, either party may propose solutions.~~
- ~~7. **Developing and writing a plan:** The ultimate goal of mediation is to obtain a written resolution to the conflict. The parties establish the terms of the agreement. The mediator writes the final agreement, which is signed by the parent(s), school representatives, and mediator. Each party retains a copy of the agreement. If an agreement involves~~

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~~proposed changes to a student's IEP, an IEP team meeting should be convened as soon as possible.~~

- ~~8. **Implementation:** For the final agreement to work effectively, its provisions shall be implemented. The signed agreement demonstrates a commitment by both parties to abide by the conditions of the agreement. Ultimately, it is the responsibility of the parties to fulfill their obligations.~~

~~For additional information, contact:~~

~~*Dispute Resolution Coordinator*~~

~~State Department of Education~~

~~Division of Student Achievement and School Improvement~~

~~P.O. Box 83720~~

~~Boise, Idaho 83720-0027~~

~~208/332-6912~~

~~800/432-4601~~

~~TT: 800/377-3529~~

~~FAX: 208/334-4664~~

**Regional Special Education**

~~North: 208/667-2588 Coeur d'Alene~~

~~208/885-9060 Moscow~~

~~Southeast: 208/282-3610 Pocatello~~

~~208/736-4263 Twin Falls~~

~~Southwest: 208/426-4315 Boise~~

~~208/426-4397 Boise~~

**DisAbility Rights Idaho (formerly Comprehensive Advocacy, Inc. (Co-Ad))**

~~4477 Emerald Street, Suite B-100~~

~~Boise, ID 83706~~

~~V/TT: 208/336-5353~~

~~V/TT: 866/262-3462~~

**Idaho Parents Unlimited, Inc. (IPUL)**

~~1878 W Overland Road~~

~~Boise, ID 83705~~

~~800/242-IPUL~~

~~V/TT: 208/342-5884~~



**IDAHO STATE DEPARTMENT OF EDUCATION**

**Procedures for Resolving Complaints**

**~~UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT OF 2004~~**

***Section 1. Filing Complaints***

**~~A. Filing a Formal Complaint~~**

~~Any individual or organization from Idaho or another state who believes a school district or other education agency has violated a requirement of Part B of the Individuals with Disabilities Education Improvement Act 2004 (IDEA 2004) may file a formal complaint with the State Department of Education (SDE). The complaint shall:~~

- ~~1. Be in writing. Electronic mail is not acceptable. (The SDE will provide reasonable accommodations to individuals who need assistance in filing written complaints.)~~
- ~~2. Be signed and dated.~~
- ~~3. Include one or more allegations. Allegations are statements that an education agency has violated a requirement of Part B of the IDEA 2004. The alleged violations may not be older than one year from the date the complaint is received by the SDE.~~
- ~~4. Include the supporting facts of each allegation. Supporting facts are a description of the events to support the allegation(s), including the name(s) of the student(s) involved, as appropriate.~~
- ~~5. Include a proposed resolution for the complaint.~~

**~~B. Contact Information Required~~**

~~Complainants should include their mailing addresses and work and home telephone numbers as well as the name, address, and telephone number of the student(s) involved.~~

**~~C. Formal Complaints State Administrative Complaints Address~~**

~~Complaints shall be mailed to:~~  
~~Dispute Resolution Coordinator~~  
~~State Department of Education~~  
~~Division of Student Achievement and School Improvement~~  
~~P.O. Box 83720~~  
~~Boise, ID 83720-0027~~

***Section 2. Evaluating Complaints***

~~At times, the SDE may not be able to proceed with resolution of all of a complainant's concerns. Complaints will be evaluated to determine whether the SDE can proceed with resolution. The SDE will notify the complainant, within 30 days of receipt of a complaint, if it cannot proceed with complaint resolution and the reasons. The complainant has the option of filing a new complaint and restarting the 60-day timeline or revising the complaint. If the revised complaint contains additional allegations on which the SDE can proceed, the SDE will modify the scope of complaint resolution and may extend the 60-day timeline.~~

~~A. Complaint resolution cannot proceed when:~~

- ~~1. The complaint is not in writing.~~
- ~~2. The complaint is not signed.~~
- ~~3. The complaint does not include allegations of Part B violations. (If appropriate, the SDE will notify the complainant of the appropriate agency, entity, or process to address his or her concerns.)~~
- ~~4. The complaint does not include the facts to support the allegations for any of the allegations.~~
- ~~5. All of the allegations in the complaint have been resolved in a previous due process hearing. However, the SDE will resolve a complaint alleging that the education agency failed to implement a due process hearing decision.~~

~~B. Resolution of every allegation cannot proceed when:~~

- ~~1. Some of the statements in the complaint are not allegations that an education agency has violated a requirement of Part B of the IDEA 2004. In this situation, the SDE will proceed with resolution of the statements that are allegations. Where appropriate, the SDE will assist the complainant in clarifying other statements and/or will inform the complainant of the appropriate agency, entity, or process to address concerns that do not allege violations of the IDEA 2004.~~
- ~~2. The facts to support some of the allegations are not provided. In this situation, the SDE will proceed with resolution of the allegations for which facts have been included. If appropriate, the SDE will assist the complainant in identifying the facts for his or her other allegations.~~
- ~~3. Some or all of the allegations in the complaint are the subject of a current due process hearing. In this situation, the SDE will proceed with resolution of allegations that are~~

~~not part of the due process hearing. The SDE will set aside allegations that are the subject of a due process hearing and will suspend the timeline for those allegations. When the hearing is resolved, the SDE will proceed with resolution of any allegation on which the hearing officer has not ruled. However, the SDE will proceed to resolve allegations that an education agency failed to implement a due process hearing decision.~~

- ~~C. If the complaint is withdrawn by the complainant prior to expiration of the timeline for resolution, the SDE will close the complaint.~~

### ***Section 3. Complaint Resolution Processes***

~~The SDE will make every effort to resolve complaints in the least adversarial manner possible. Resolution of a formal complaint may be achieved through one or more of the following four processes:~~

- ~~1. **Verification of resolution:** At any time during an investigation, the education agency may submit information to the SDE to document that one or more of the allegations in the complaint have been resolved. The SDE may also receive similar information from other sources.~~
- ~~2. **Corrective action plan (CAP):** The district may propose a CAP to address the allegations in the complaint. The SDE may accept, reject, or negotiate the proposed CAP or require other corrective actions or timelines to ensure that the district will achieve compliance for each allegation stated in the complaint. If this process is not successful, the SDE will conduct a full investigation.~~
- ~~3. **Early complaint resolution (ECR):** The SDE may propose the use of ECR to resolve the complaint. This mutual approach provides the complainant and the district an opportunity to immediately resolve the issues prompting the complaint, even though the parties may not agree on particular findings of fact and conclusions. The SDE Dispute Resolution Coordinator or a contracted investigator will facilitate a resolution through the development of a written agreement to be signed by both parties. If this process is not successful, the SDE will conduct a full investigation.~~
- ~~4. **Investigation:** If necessary, the SDE will investigate the complaint by conducting interviews and reviewing files, correspondence, and other information. An on-site investigation may occur if necessary.~~

### ***Section 4. Compliance Activities***

~~The SDE will negotiate or require corrective actions, including timelines, as necessary, for the education agency to achieve compliance.~~

A. ~~**Remedies:** The SDE will identify the specific corrective action necessary for the district to achieve compliance. If it is determined that the district has failed to provide appropriate services, the SDE will address:~~

- ~~1. How to remedy the denial of those services including, as appropriate, the award of compensatory education, monetary reimbursement, or other corrective actions appropriate to the needs of the student that is the subject of the complaint; and~~
- ~~2. Appropriate future provision of those services for all students with disabilities in the education agency.~~

B. ~~**Documentation:** The SDE will verify implementation of corrective actions and compliance by obtaining documentation from the district or education agency, confirming compliance with the complaint, or conducting an on-site follow up.~~

- ~~1. **Technical assistance:** If necessary, the SDE will provide technical assistance to the district or education agency during or following complaint resolution. The SDE will maintain a record of technical assistance provided to districts or education agencies.~~
- ~~2. **Sanctions:** If the district or education agency fails to achieve compliance, the SDE may initiate procedures to withhold federal funds until compliance is achieved.~~

### *~~Section 5. Complaint Resolution Steps~~*

~~Within 60 days of receiving the complaint, the SDE will complete the following:~~

- ~~A. The SDE will decide to accept or reject the complaint based on the allegations and supporting facts.~~
- ~~B. Notify both parties in writing of the SDE determination, including a copy of the complaint and "Procedures for Resolving Complaints".~~
- ~~C. Offer mediation to both parties as a method for resolving the complainant's concerns.~~
- ~~D. The complainant will be notified of his or her right to submit additional information, either orally or in writing. Complainants will be asked to submit additional written information within 15 days of receiving notice of the right to do so. The complainant may submit additional oral information through an interview with the complaint investigator.~~
- ~~E. Gather sufficient additional information to make a determination for each allegation through informal fact finding; telephone or personal interviews; and a review of files, documents, correspondence, and other information. If both parties agree that one or more violations have occurred, additional fact finding will not be conducted in those areas.~~

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- ~~F. Carry out an independent on-site investigation if it is determined necessary.~~
- ~~G. Review all relevant information and make an independent determination for each allegation filed by the complainant as to whether the education agency has violated a requirement of Part B of the IDEA 2004.~~
- ~~H. Issue a Final Report to the complainant and district or education agency that contains:
  - ~~1. An introduction with:
    - ~~a. An assigned case number per the date the complaint was received by the SDE.~~
    - ~~b. The name of the parties involved.~~
    - ~~c. The complainant's allegations.~~
    - ~~d. The complaint investigator's name.~~
    - ~~e. Identified information gathered and reviewed.~~
    - ~~f. If relevant, a description of any extension of the 60-day timeline and the exceptional circumstances that warranted the extension.~~~~
  - ~~2. The SDE's findings of fact.~~
  - ~~3. The SDE's conclusion regarding each allegation.~~
  - ~~4. If the SDE determines the education agency violated a Part B requirement, required Corrective Action(s) will be stated in the report. A timeline and method of documenting compliance will be included.~~~~
- ~~I. Personally identifiable information about the student will not be included in the final report. The use of personally identifiable information about personnel employed by the education agency will be avoided.~~
- ~~J. The 60-day timeline may be extended if exceptional circumstances exist and are documented by the SDE, or the parties agree to voluntarily engage in mediation or other dispute resolution options offered by the SDE. If the timeline is extended, both parties will be notified. The notification will include the length of the extension and a description of the exceptional circumstances that warrant the extension.~~

***Section 6. Record of Complaints***

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~~Each complaint file will be maintained for a period of at least 5 years and will include an original or copy of:~~

- ~~1. The complaint.~~
- ~~2. The investigative notes, documents, correspondence, phone logs, etc.~~
- ~~3. The Final Report, or documentation that the complaint was withdrawn.~~
- ~~4. Verification of compliance if additional activities are required in the report.~~

## MEDIATION AGREEMENT

## MEDIATION AGREEMENT

Student's Name	Date of Birth	Sex
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Parent's Name \_\_\_\_\_

Address	City	Zip
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Phone (Home)
Work)
(Cell)

School District or Agency

Address	City	Zip
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Mediator	Date(s) of Mediation(s)
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Is this Mediation related to a filed complaint?	Yes	No	Complaint #
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Participants (List name and title or relationship to student)

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## TERMS OF AGREEMENT

[illegible]

(USE ADDITIONAL PAGES AS NEEDED)

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If applicable, we agree that this Mediation Agreement will serve to amend the existing Individualized Education Program.

Yes

No

*Initials*

*Initials*

*We, the undersigned, understand that this mediation is legally binding and enforceable in court. We enter into this agreement willingly and informed of our rights and responsibilities with regards to entering this agreement.*

Parent/Adult Student Signature(s)

Local District or Agency Signature(s)

\_\_\_\_\_  
\_\_\_\_\_

Date:

Date:



**MEDIATION CONFIDENTIALITY AGREEMENT**

Mediation is a voluntary, no cost, confidential service provided by the State Department of Education (SDE). Maintaining confidentiality is critical to the integrity of the process. Confidentiality encourages free, open communication, toward a collaborative settlement.

The parties involved in this mediation proceeding on this \_\_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_, agree to the following:

1. This confidentiality agreement must be signed by all parties before mediation services are provided.
2. Discussions that occur during the mediation process are confidential and cannot be used as evidence in any subsequent due process hearing or civil proceeding.
3. All parties agree not to call the mediator (or an SDE observer of this mediation) as a witness or depose the mediator (or SDE observer) in any subsequent due process hearing or legal proceeding.
4. The mediator will collect all personal notes which shall be destroyed at the conclusion of the mediation session.
5. This mediation session will not be recorded.
6. The only record to be retained will be the written agreement and this signed confidentiality agreement. If parties come to agreement, a copy of the written agreement will be given to both parties and filed with the SDE by the mediator. If for any reason the mediation fails to produce a written agreement, the mediator will inform the SDE that no agreement was reached.
7. All parties understand that the mediator is responsible for collecting the signed confidentiality pledge and the signed written agreement if one was created.

**Signatures:**

Name	Role	Date
Name	Role	Date
Name	Role	Date
Name	Role	Date
Name	Role	Date
Name	Role	Date
Name	Role	Date

**FORM FOR FILING A STATE ADMINISTRATIVE ~~FORMAL~~  
COMPLAINT**

*Please submit any request for a formal complaint to the Dispute Resolution Coordinator, State Department of Education, ~~Division of Student Achievement and School Improvement~~, P.O. Box 83720, Boise, ID 83720-0027. The alleged violations may not be older than one year from the date the complaint is received by the SDE. (You may use this form or submit a letter that includes the information below.)*

**A. General Information:** (type or print)

Date: \_\_\_\_\_

Name of Individual Filing the Complaint: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: (Hm) \_\_\_\_\_ (Wk) \_\_\_\_\_ (Cell) \_\_\_\_\_

Email Address: \_\_\_\_\_

Relationship to Student: \_\_\_\_\_

Name of District /Agency Complaint Is Against: \_\_\_\_\_

**Student Information:**

**District Information:**

Student Name: \_\_\_\_\_

District Contact: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ Zip: \_\_\_\_\_

City: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

Telephone: \_\_\_\_\_

School Student Attends: \_\_\_\_\_ Student's Date of Birth: \_\_\_\_\_

(If complaint involves more than one student, please complete the student and district information for each student.)

In the case of a homeless child or youth, provide available contact information:

\_\_\_\_\_



## DUE PROCESS HEARING REQUEST FORM

*Please submit any request for a due process hearing to your district superintendent and to the Dispute Resolution Coordinator, State Department of Education, ~~Division of Student Achievement and School Improvement~~, P.O. Box 83720, Boise, ID 83720-0027. (You may use this form or submit a letter that includes the information below.)*

### A. General Information: (type or print)

Date of Written Request: \_\_\_\_\_ Date Received (completed by SDE): \_\_\_\_\_

Name of Individual Requesting Hearing: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ Zip: \_\_\_\_\_ Day Phone: \_\_\_\_\_

Parent/Guardian of Student: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: (Hm) \_\_\_\_\_ (Wk) \_\_\_\_\_ (Cell) \_\_\_\_\_

Email Address: \_\_\_\_\_

Name of District/Agency Hearing Request Is Against: \_\_\_\_\_

### Student Information:

Student Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

School Student Attends: \_\_\_\_\_

### District Information:

District Contact: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

Student's Date of Birth: \_\_\_\_\_

(Complete if the information is available):



**EXPEDITED DUE PROCESS HEARING REQUEST FORM**

*Please submit any request for an expedited due process hearing to your district superintendent and to the Dispute Resolution Coordinator, State Department of Education, P.O. Box 83720, Boise, ID 83720-0027. (You may use this form or submit a letter that includes the information below.)*

**A. General Information: (type or print)**

Date of Written Request: \_\_\_\_\_ Date Received (completed by SDE): \_\_\_\_\_

Name of Individual Requesting Hearing: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: (Hm) \_\_\_\_\_ (Wk) \_\_\_\_\_ (Cell) \_\_\_\_\_

Email Address: \_\_\_\_\_

Parent/Guardian of Student: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ Zip: \_\_\_\_\_ Telephone: (Hm) \_\_\_\_\_ (Wk) \_\_\_\_\_

Name of District/Agency Hearing Request Is Against: \_\_\_\_\_

**Student Information:** **District Information:**

Student Name: \_\_\_\_\_ District Contact: \_\_\_\_\_

Address: \_\_\_\_\_ Address: \_\_\_\_\_

City: \_\_\_\_\_ Zip: \_\_\_\_\_ City: \_\_\_\_\_ Zip: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Telephone: \_\_\_\_\_

School Student Attends: \_\_\_\_\_ Grade: \_\_\_\_\_

(Complete if the information is available):

Student's Attorney: \_\_\_\_\_

(Complete if the information is available):

District's Attorney: \_\_\_\_\_

## Chapter 13: Dispute Resolution

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Document date: **Resolution Session Form** Page \_\_\_\_ of \_\_\_\_

Student's Name:	District ID:	State ID:	Grade:	Sex:
Native Lang:	Ethnicity:	Birth Date:	Age:	
District:	School:			
Parent/Guardian Name:		Home Phone:		
Address:				
Native Language:		Daytime Phone:		
Parent/Guardian Name:		Home Phone:		
Address:				
Native Language:		Daytime Phone:		
Director:		Daytime Phone:		

~~The Individuals with Disabilities Education Improvement Act of 2004 requires that options be made available to resolve conflict when a request for a due process hearing is filed. The "resolution session" provides an opportunity for the parent and/or adult student and the district to resolve issues identified in a due process hearing request. A resolution session is a meeting scheduled by the district and involves relevant members of the IEP team and the parent and/or adult student. The attorney for the school district will not attend the meeting unless the parent's and/or adult student's parent's/adult student's attorney is present. If requested by both parties, the State Department of Education (SDE) will appoint a neutral facilitator to conduct the resolution session.~~

~~A resolution session will be scheduled by the district unless one of the following occurs:~~

- ~~1. Both the parent and/or adult student parent/adult student and the school district mutually agree to participate in SDE mediation.~~
- ~~2. Both the parent and/or adult student parent/adult student and the school district mutually agree in writing to waive the resolution session.~~

~~Should a resolution session occur, the forty five (45) day hearing process will not start until up to 30 days have expired, allowing for resolution, unless the thirty (30) day period is shortened by mutual written consent of both parties.~~

~~Should the parties mutually waive the resolution session and mutually agree not to participate in SDE mediation, the due process hearing will be scheduled, and the 45-day timeline for completing the hearing will start on the date that the request for a hearing was received.~~



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Signature	Waive Resolution Meeting	Date
Parent:	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Parent:	<input type="checkbox"/> Yes <input type="checkbox"/> No	
District Representative:	<input type="checkbox"/> Yes <input type="checkbox"/> No	

~~Please sign below regarding your participation in a resolution session. Unless both the district and the parent and/or adult student parent/adult student waive the resolution session, a meeting will be scheduled. If the district schedules a resolution session and the parent and/or adult student parent/adult student does not attend, the issues cannot be taken to a due process hearing.~~