

STATE BOARD OF EDUCATION
APRIL 6, 2020

SUBJECT

Board Policy II.B. Appointment Authority and Procedures – First Reading

REFERENCE

April 2016	Board approved the first reading of amendments to Board Policy II.B. providing clarifications to provisions regarding coaches and athletic directors.
June 2016	Board approved the second reading of amendments to Board Policy II.B.

APPLICABLE STATUTE, RULE, OR POLICY

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

BACKGROUND/DISCUSSION

Policy II.B was established to address procedures to assure due process in the normal course of business activity. The amended policy does not remove those due process procures, but provides the Board the opportunity to grant to institutions the flexibility to address fiscal realities immediately in the wake of circumstances of an emergent nature requiring. The proposed revision to Idaho State Board of Education Policy II.B is designed to provide maximum flexibility to state institutions of higher education in the event of extraordinary circumstances that require immediate response.

IMPACT

This policy change will allow institutions to implement necessary procedures for addressing budget realities when circumstances require immediate, proactive and decisive solutions minimizing more long-term impact, both financial and structural.

ATTACHMENTS

Attachment 1 – Board Policy II.B – First Reading

STAFF COMMENTS AND RECOMMENDATIONS

The proposed revision of Policy II.B allows the Board to suspend the normal processes related to application of employment actions and notifications in the event of catastrophic circumstances. The amendment may be applied to one or more of the institutions upon the Board's determination that circumstances warrant such extreme action. Staff recommends approval.

BOARD ACTION

I move to approve the first reading of proposed amendments to Board Policy II.B., Appointment Authority and Procedures, as submitted in Attachment 1.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

Idaho State Board of Education

GOVERNING POLICIES AND PROCEDURES

SECTION: II. HUMAN RESOURCES POLICIES AND PROCEDURES

SUBSECTION: B. Appointment Authority and Procedures

~~June 2016~~[April 2020](#)

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

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ATTACHMENT 1

classified staff employee groups. Such groups will be given at least twenty-one (21) calendar days to provide their input on the proposed actions as provided for in the policies of the institution. The institution shall, once such input is taken and considered by the chief executive officer, establish procedures that provide for at least thirty (30) days written notice prior to the effective date of the action and an opportunity for an affected employee to be heard. The notice must include the effective date of the employment action, a statement of the basis for the employment action, and a description of the process to be heard. Such process shall be comparable to the process for review described in Board Policy Section II.N.7.a. The employee may contest the action only based on whether the action, with respect to that employee, violates the procedural requirements of this policy, applicable institutional policy or constitutional or statutory protections for that employee. The employee may not challenge the chief executive officer's determination that a reduction in budgetary expenditures is necessary, nor contest the chief executive officer's chosen means of addressing the reduction need, unless such means violate constitutional or statutory protections for the employee.

[e. In the event of a natural disaster, pandemic or other unforeseen catastrophe requiring one or more of the chief executive officers to act quickly to address the resulting financial challenge, the Board may suspend the provisions of Paragraphs 2.c. and 2.d which would restrict a chief executive officer's ability to allow such actions to be implemented by the chief executive officers until the catastrophic events are determined by the Board to be concluded, at which time the provisions of Paragraphs 2.c and 2.d shall be immediately reestablished.](#)

3. Specifically Reserved Board Authority

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

a. Position Authorizations

Any position at a level of vice-president (or equivalent) and above, regardless of funding source, requires Board approval.

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

- i. Position title;
- ii. Type of position;
- iii. FTE;
- iv. Term of appointment;
- v. Effective date;
- vi. Approximate salary range;
- vii. Funding source; and
- viii. A description of the duties and responsibilities of the position.

- b. The initial appointment of an employee to any type of position at a salary that is equal to or higher than 75% of the chief executive officer's annual salary.
- c. The employment agreement, and all amendments thereto, of any coach or athletic director (at the institutions only) longer than three (3) years, or for a total annual compensation amount of \$200,000 or higher. Policies applicable to employment agreements for athletic directors and coaches are found in Section II.H.
- d. The criteria established by the institutions for initial appointment to faculty rank and for promotion in rank, as well as any additional faculty ranks and criteria as may be established by an institution other than those provided for in these policies (see Section II. G.) Any exceptions to the approved criteria also require Board approval.

For the procedures established for periodic performance reviews of tenured faculty members see Section II. G.

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SUBJECT

COVID-19 Pandemic Update and Response

REFERENCE

February 2017

Board approved proposed amendments to Section 33-512, Idaho code be submitted to the legislature for consideration. Amendments would allow the Board to waive a portion of the required instructional hours in the case of a state or county emergency when all schools in a school district are impacted by extended closures and when school districts provide assurances that only the minimum hours were being requested for waiver.

March 23, 2020

Board approved ESEA Federal Accountability Waiver and the waiver of provisions of IDAPA 08.02.03 pertaining to senior graduation requirements and administration of the spring 2020 administration of the ISAT.

APPLICABLE STATUTE, RULE, OR POLICY

Sections 33-512, 33-522, 33-1602, 33-1615, and 33-1616, Idaho Code
Idaho Administrative Code, IDAPA 08.02.01.007 and IDAPA 08.02.03.105

BACKGROUND/DISCUSSION

At the March 23, 2020 Special Board meeting, the Board set a soft closure for all public schools in Idaho until April 20, 2020. The soft closure restricts schools from holding in-person classes in the buildings in alignment with Center for Disease Control (CDC) social distancing guidelines. The soft closure and subsequent guidelines posted on the Board website (<https://boardofed.idaho.gov/coronavirus-covid-19-resources/>) clarify distance learning expectations for the schools and additional operational areas designed to provide the schools with needed flexibility as they continue to educate Idaho students through this crisis, do their best to help students through the remainder of the school year and set them up to be able to continue their education in fall.

As the pandemic has progressed, additional models and guidance from state health officials indicate the virus is likely to peak in Idaho in late April to early May. At the time the Board set April 20 date, it committed to re-evaluate the timeline as the crisis developed in Idaho. The Board will have the opportunity to discuss the timeline in light of the updated information as well as additional areas of consideration that have been identified during the Governor's K-12 Emergency Council meetings. Projection data may be found at the following links:

- <https://covid19.healthdata.org/projections> (select Idaho from the drop-down menu)
- <https://boisestate.maps.arcgis.com/apps/opsdashboard/index.html#/2d27bfd0cb8144438679cb1d0fade2f4>

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Additional areas of consideration and clarification include continuing the conversation around statutory requirements such as: required instructional hours, administration and reporting of the Idaho reading assessment required in Section 33-1615, Idaho Code, the civics exam required in Section 33-1602, Idaho Code, and minimum instruction hours required by Section 33-512, Idaho Code. Section 33-512, Idaho Code sets out a process that allows the Board to waive the minimum required instructional hours on a school district by school district basis. The statute sets out the processes by which school districts must request a waiver, including identifying the number of hours that the school district is requesting to be waived. Any waivers outside of this process would require a waiver of the statutory requirements through the Governor's executive emergency powers.

Section 33-1602, Idaho Code requires all secondary students to show they have met the state civics and government standards through the successful completion of the civics test or alternate path established by the local school district to graduate from high school. While most students currently show they meet these standards through the administration of a civics test, the alternate path language allows schools to use other measures to show their students have met the state standards. This could include a locally established assessment or passage of the courses the students took that taught to these standards.

Section 33-1615, Idaho Code requires all students in kindergarten through grade three to have their reading skills assessed by an assessment administered by the State Department of Education, along with a requirement to report the results of the assessment. Like the waiver of the processes required for school districts to request a waiver of the minimum instructional hours, these statutory requirements cannot be waived by the Board. The waiver of any statutory requirements would require the Governor's executive authority during the current state of emergency.

IDAPA 08.02.01.007 authorizes the Board to waive any education rule not required by state or federal law. This authorization allows the Board to provide some flexibility to some requirements in administrative rule. The Board exercised this authority to waive the administration of the Idaho State Achievement Test and some senior graduation requirements at the March 23, 2020 Special Board meeting. Since that meeting, one additional area in administrative rule has been identified for possible waiver. IDAPA 08.02.03. Rules Governing Thoroughness, section 105.01.a. defines one semester credit hour as sixty (60) hours of total instruction, this section further goes on to allow for school districts and charter schools to request a waiver from this provision by submitting a letter to the State Department of Education. Subsection a. of this requirement allows school districts and charter schools to award credits based on a student's mastery of the subject area content standards as determined at the local level. Virtual schools currently meet this requirement through a methodology established by the State Department of Education. Waiver of this requirement would eliminate the need for all schools

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from having to meet this requirement at the same time they are undergoing the massive transition to providing distance instruction.

In addition to these areas, school districts and charter schools have questions or concerns about the following areas:

- Grading students and the impact different types of grading have on a student's GPA and postsecondary education plans;
- Options for juniors to still take the college entrance exam at no cost to them either during the summer or their senior year; and
- Impacts on school district transportation contracts (for those districts that contract out for this service)
- School district financial emergency declarations
- The impact and availability of the CARES Act federal stimulus funding and the 10% set aside for the State Educational Agency's use.

IMPACT

Board action will provide school districts and charter schools with a level of certainty during this public health crisis, and will provide schools, parents, and students a pathway for the remainder of the school year.

STAFF COMMENTS AND RECOMMENDATIONS

Student grading and grade reporting is the responsibility of the local school district. Each school district and charter school determines how their students are graded.

Section 33-1006, Idaho Code, establishes the provisions for the transportation support program. School district funding is based on the reimbursement of reportable miles. Previous action by the Board allows for schools to include mileage for delivering food and instructional material to students as reimbursable miles. This mileage, however, is not likely to be at the same level as reimbursable miles driven picking up and dropping off student on school days. Pursuant to Section 33-1006(5), Idaho Code, "the state's share of the transportation support program shall be fifty percent (50%) of reimbursable transportation costs of the district incurred during the immediately preceding state fiscal year, except for the cost of state department of education training and fee assessments and bus depreciation and maintenance, for which the state's share shall be eighty-five percent (85%) of such costs." For school districts that contract for pupil transportation services, the state's share shall be the average state share of costs for district-run operations, based on the statewide total of such costs.

Section 33-522, Idaho Code, sets out criteria schools must meet to declare a financial emergency. When these criteria are certified by the State Superintendent of Public Instruction, the school district may declare a financial emergency and is granted flexibility from the negotiation time requirements sets out in Sections 33-514 and 33-515, Idaho Code. A declared financial emergency also allows for school districts to impose their last best offer following the due process requirements set in Section 33-515, Idaho Code.

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BOARD ACTION

I move to extend the soft closure to the end of the 2019-2020 school year.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

OR

I move to extend the soft closure to _____, 2020 or until such time as local and state social distancing orders have been lifted and re-entry criteria established by the Board have been met.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

I move to request the Governor use his executive powers to waive the required minimum instructional hours established in Section 33-512, Idaho Code, the civics exam requirements established in Section 33-1602, Idaho Code, and Idaho reading assessment administration and reporting required in Section 33-1615, Idaho Code.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

I move waive the requirement in IDAPA 08.02.03.105.01.a. defining a semester credit as 60 hours of instruction for the remainder of the 2019-2020 school year.

Moved by _____ Seconded by _____ Carried Yes _____ No _____