

PLANNING, POLICY AND GOVERNMENTAL AFFAIRS
AUGUST 23, 2023

SUBJECT

Proposed Rule – Docket No. 08-0203-2301, Rules Governing Thoroughness

REFERENCE

March 23, 2020	Board approved partial waiver of IDAPA 08.02.03.105, waiving the college entrance exam, senior project graduation requirements for students graduating in 2020 and administration of the ISAT for the 2020-2021 school year.
October 2020	Board approved partial waiver of IDAPA 08.02.03.105, waiving the senior project graduation requirement for students graduating in 2021.
December 2020	Board approved partial waiver of IDAPA 08.02.03.105, waiving the requirement the college entrance exam requirement for students graduating in 2021.
June 2021	Board approved temporary omnibus rules, Dockets 08-0000-2100 and 55-0000-2100.
August 2021	Board approved proposed rules Dockets 08-0201-2101, 08-0202-2102, and 08-0203-2101.
October 2021	Board approved proposed Omnibus rule, Docket 08-0000-2100, incorporating proposed rules approved in August 2021.
November 2021	Board approved pending Omnibus rule, Docket 08-0000-2100.
June 2022	Board approved temporary rule, Docket 08-0203-2202, amending the assessment section to account for administering assessments at the high school level using a modified cohort model.
August 2022	Board approved proposed pending rule, Docket 08-0203-2202.

APPLICABLE STATUTE, RULE, OR POLICY

Idaho Constitution Article IX, Section 1
Idaho Administrative Code, IDAPA 08.02.03, Rules Governing Thoroughness
Idaho Code Title 67, Chapter 52, Idaho Administrative Procedures Act

BACKGROUND/DISCUSSION

Administrative rules are made up of three types of rules: temporary rules, proposed rules and pending rules. Temporary and proposed rules may be promulgated jointly with a single docket number or temporary rules may be promulgated as a standalone rule. Guidance for the rulemaking process is provided by the Office of Administrative Rules Coordinator, Division of Financial Management through the Idaho Rule Writer's Manual.

Executive Order 2020-01, Zero Based Regulations, created an ongoing review process for all existing rules as of June 30, 2020. Each rule chapter is required

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to be reviewed by the agency that promulgated the rule according to a schedule established by the Division of Financial Management (DFM) no later than legislative adjournment *sine die* in 2026. The agency review schedule is required to be staggered across agencies and within agencies with five or more rule chapters. Administrative rules promulgated under the Board's authority include IDAPA 08, IDAPA 55, and IDAPA 47. The Board's administrative rules review schedule may be found at www.dfm.idaho.gov

Notice of Intent to Promulgate Rules was published in the June 7, 2023 (Vol 23-6) Idaho Administrative Rules Bulletin for the following Rule Docket Numbers:

- Docket No. 08-0102-2301 – IDAPA 08.01.02 Rules Governing the Postsecondary Credit Scholarship Program – Rule Repeal
- Docket No. 08-0201-2301 – IDAPA 08.02.01 Rules Governing Administration – Temporary Rule to expire 6/30/23
- Docket No. 08-0203-2301-IDAPA 08.02.03 Rules Governing Thoroughness – Negotiated Rulemaking
- Docket No. 08-0401.2301 – IDAPA 08.04.01 Rules of the Idaho Digital Learning Academy – Zero-Based Regulation Chapter Rewrite
- Docket No. 55-0103-2301 – IDAPA 55.01.03 – Rules of Career Technical Schools – Zero-Based Regulation Chapter Rewrite
- Docket No. 55-0104-2301 - IDAPA 55.01.04 – Rules Governing Idaho Quality Program Standards Incentive Grants and Agricultural Education Program Start-up Grants

Notice of Intent to Promulgate Rules was published in the July 7, 2023 (Vol 23-7) Idaho Administrative Rules Bulletin for the Following Rule Docket Numbers:

- Docket No. 08.0113.2301 – IDAPA 08.01.13 Rules Governing the Opportunity Scholarship – Temporary Rule effective 7/1/23
- Docket No. 08.0113.2302 – IDAPA 08.01.13 Rules Governing the Opportunity Scholarship – Negotiated Rulemaking

IDAPA 08.02.03, Rules Governing Thoroughness, sets out provisions aimed at ensuring a thorough system of public education. These minimum requirements include, but are not limited to content standards, high school graduation requirements, comprehensive statewide assessment system, and Idaho's state and federal accountability framework.

Two meetings for the purpose of gathering initial public feedback were held on June 22, 2023 and June 23, 2023.

After feedback was gathered, the proposed revisions were drafted and are submitted as Attachment 2.

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IMPACT

If the State Board of Education approves the proposed rule, it will be submitted to the Division of Financial Management Office of the Administrative Rules Coordinator and will be published as a proposed rule.

A 21-day public feedback period follows the publication of proposed rules. During this time stakeholders and members of the public may provide additional feedback on the drafted text. Based on comments received during the feedback window and Board direction, changes may be made to proposed rules prior to entering the pending stage. Pending rules are then brought back to the Board for consideration. Once approved, pending rules will be submitted for final publication and are then forwarded to the legislature for consideration. Pending rules become effective at the end of the legislative session in which they are submitted if they are not rejected by the Legislature.

If the State Board of Education does not approve the proposed rule, the existing rule will remain in effect.

ATTACHMENTS

Attachment 1 – Notice of Intent to Promulgate Rules

Attachment 2 – Proposed Rule Docket No. 08-0203-2301- Rules Governing Thoroughness

BOARD STAFF COMMENTS AND RECOMMENDATIONS

In April of 2023, State Department of Education (SDE) staff requested that a subsection of IDAPA 08.02.03 Rules Governing Thoroughness be considered for revision. Specifically, the proposed change would remove subsection 112.03.e. as it is duplicative and therefore unnecessary.

Section 112 states that “. . . all school categories will administer an annual satisfaction and engagement survey to parents, students, and teachers.” Subsection 112.01 goes on to identify Alternative High Schools as a school category. This establishes that alternative high schools are required to administer an annual survey.

However, in section 112.03.e the rule separately establishes that alternative high schools “only” must administer such a survey. This is a duplicative reference to the requirement that all school categories administer an annual survey and has been confusing to the public in the past.

Removing subsection 112.03.e would not make a material change to the overall requirements as all schools, including alternative high schools, will retain the requirement to administer a satisfaction survey on an annual basis. The change would serve only to clarify the requirements.

Staff recommends approval.

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BOARD ACTION

I move to approve proposed rule – Docket Number 08-0203-2301 as submitted in Attachment 2.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

IDAPA 08 – STATE BOARD OF EDUCATION

08.02.03 – RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-2301

NOTICE OF INTENT TO PROMULGATE RULES – NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Article IX, Section 2 of the Idaho Constitution and under sections 33-105, 33-116, 33-118, and 33-1612, Idaho Code.

MEETING SCHEDULE: A public meeting(s) on the negotiated rulemaking will be held no later than June 23, 2023.

Specific meeting dates, times, and locations of scheduled meetings, details are forthcoming and will be provided on the agency website and on <https://townhall.idaho.gov/>.

The meeting site(s) will be accessible to persons with disabilities, if needed. Requests for accommodation must be made at least one (1) day prior to the meeting to the agency address below.

METHOD OF PARTICIPATION: Persons wishing to participate in the negotiated rulemaking must do the following:

Interested persons wishing to participate in the negotiated rulemaking may do so by contacting the undersigned either in writing, by email, or by calling the phone number listed below. Responses must be received by June 23, 2023.

Should a sufficient number of persons respond to this notice, negotiated meetings will be scheduled. All scheduled meetings shall be posted and made accessible on the agency website at the address listed below and via <https://townhall.idaho.gov/> at least 48 hours before the meeting.

Failure of interested persons to respond to this notice of intent or the lack of a sufficient number of responses to this notice of intent may result in the discontinuation of further informal proceedings. In either event, the agency shall have sole discretion in determining the feasibility of scheduling and conducting informal negotiated rulemaking and may proceed directly to formal rulemaking if proceeding with negotiated rulemaking is deemed infeasible.

Upon conclusion of the negotiated rulemaking, any unresolved issues, all key issues considered, and conclusion reached during the negotiated rulemaking will be addressed in a written summary. The summary will be made available to interested persons who contact the agency or, if the agency chooses, the summary may be posted on the agency website.

DESCRIPTIVE SUMMARY AND STATEMENT OF PURPOSE: The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principal issues involved:

The rulemaking will consider the removal of a duplicative satisfaction and engagement survey for alternative high schools. This rulemaking will also consider any technical edits identified as part of the negotiated rulemaking process.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES: For assistance on technical questions concerning this negotiated rulemaking or to obtain a preliminary draft copy of the rule text contact Nicholas Wagner at rules@osbe.idaho.gov or (208)-488-7586.

Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the Idaho State Board of Education website at the following web address: <https://boardofed.idaho.gov/board-policies-rules/board-rules/education-rules/>.

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**STATE BOARD OF EDUCATION
Rules Governing Thoroughness**

***Docket No. 08-0203-2301
Negotiated Rulemaking***

Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and must be delivered on or before June 23, 2023.

DATED this 5th day of May, 2023.

Nicholas Wagner
Administrative Rules Coordinator
Idaho State Board of Education
650 W State St.
PO Box 83720
Boise, Idaho 83720-0037
Phone: (208)488-7586, fax: (208)334-2632

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08.02.03 – RULES GOVERNING THOROUGHNESS

(BREAK IN CONTINUITY OF SECTIONS)

112. ACCOUNTABILITY.

School district, charter district and public charter school accountability will be based on multiple measures aimed at providing meaningful data showing progress toward interim and long-term goals set by the State Board of Education for student achievement and school improvement. The state accountability framework will be used to meet both state and federal school accountability requirements and will be broken up by school category and include measures of student academic achievement and school quality as determined by the State Board of Education. In addition to those measures identified in the state accountability framework, all school categories will administer an annual satisfaction and engagement survey to parents, students, and teachers. (4-6-23)

01. School Category. (3-15-22)

a. Kindergarten through grade eight (K-8): Schools in this category include elementary and middle schools as defined in Subsection 112.05.f. (3-15-22)

b. High Schools, not designated as alternative high schools, as defined in Subsection 112.05.f. (3-15-22)

c. Alternative High Schools. (3-15-22)

02. Academic Measures. (4-6-23)

a. K-8, High School, and Alternative High School: (4-6-23)

i. Idaho Standards Achievement Tests (ISAT) Proficiency. (3-15-22)

ii. ISAT growth toward proficiency based on a trajectory model approved by the State Board of Education. At the high school and alternative high school level growth will be measured for students who remain in the testing cohort in both grade 8 and high school. (4-6-23)

iii. ISAT proficiency gap closure. (3-15-22)

iv. English Learners achieving English language proficiency. (3-15-22)

v. English Learners achieving English language growth toward proficiency. (3-15-22)

b. K-8 only: (4-6-23)

i. Idaho statewide reading assessment proficiency as applicable to the grades served. (4-6-23)

c. High School and Alternative High School specific: (4-6-23)

i. Four (4) year cohort graduation rate, including students who complete graduation requirements prior to the start of the school district or charter schools next fall term. (3-15-22)

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ii. Five (5) year cohort graduation rate, including students who complete graduation requirements prior to the start of the school district or charter schools next fall term. (3-15-22)

03. School Quality Measures by School Category. (3-15-22)

a. K-8, High School, and Alternative High School: (4-6-23)

i. Communication with parents on student achievement (4-6-23)

ii. Chronic absenteeism (4-6-23)

b. K-8 Only (4-6-23)

i. Students in grade 8 enrolled in pre-algebra or higher. (3-15-22)

c. High School and Alternative High School: (4-6-23)

i. College and career readiness determined through a combination of students participating in advanced opportunities, earning industry recognized certification, and/or participation in recognized high school apprenticeship programs. (3-15-22)

ii. Credit recovery and accumulation. (4-6-23)

d. High School only: (4-6-23)

i. Students in grade 9 enrolled in algebra I or higher. (3-15-22)

~~e. Alternative High School only: (4-6-23)~~

~~i. State satisfaction and engagement survey administered to parents, students, and teachers. (4-6-23)~~

04. Reporting. Methodologies for reporting measures and determining performance will be set by the State Board of Education. (3-15-22)

05. Annual Measurable Progress Definitions. For purposes of calculating and reporting progress, the following definitions shall be applied. (3-15-22)

a. Annual Measurable Progress. (3-15-22)

i. The State Department of Education will make determinations for schools and districts each year. Results will be given to the districts at least one (1) month prior to the first day of school. (3-15-22)

ii. The State Board of Education will set long-term goals and measurements of interim progress targets toward those goals. The baseline for determining measurable student progress will be set by the State Board of Education and shall identify the amount of growth (percentage of students reaching proficiency) required for each intermediate period. (3-15-22)

b. Full Academic Year (continuous enrollment). (3-15-22)

i. A student who is enrolled continuously in the same public school from the end of the first eight (8) weeks or fifty-six (56) calendar days of the school year through the state approved spring testing administration period, not including the make-up portion of the test window, will be included in the calculation to determine if the school achieved progress in any statewide assessment used for determining proficiency. A student is continuously

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enrolled if the student has not transferred or dropped-out of the public school. Students who are serving suspensions are still considered to be enrolled students. (3-15-22)

ii. A student who is enrolled continuously in the school district from the first eight (8) weeks or fifty-six (56) calendar days of the school year through the state approved spring testing administration period, not including the make-up portion of the test window, will be included when determining if the school district has achieved AYP. (3-15-22)

iii. A student who is enrolled continuously in a public school within Idaho from the end of the first eight (8) weeks or fifty-six (56) calendar days of the school year through the state approved spring testing administration period, not including the make-up portion of the test window, will be included when determining if the state has achieved progress in any statewide assessment used for determining proficiency. (3-15-22)

c. Participation Rate. (3-15-22)

i. Failure to include ninety-five percent (95%) of all students and ninety-five percent (95%) of students in designated subgroups automatically identifies the school as not having achieved measurable progress in ISAT proficiency. The ninety-five percent (95%) determination is made by dividing the number of students assessed on the Spring ISAT by the number of students reported on the class roster file for the Spring ISAT. (3-15-22)

(1) If a school district does not meet the ninety-five percent (95%) participation target for the current year, the participation rate can be calculated by the most current three (3) year average of participation. (3-15-22)

(2) Students who are absent for the entire state-approved testing window because of medical reasons or are homebound are exempt from taking the ISAT if such circumstances prohibit them from participating. Students who drop out, withdraw, or are expelled prior to the beginning of the final makeup portion of the test window are considered exited from the school. (3-15-22)

ii. For groups of ten (10) or more students, absences for the state assessment may not exceed five percent (5%) of the current enrollment or two (2) students, whichever is greater. Groups of less than ten (10) students will not have a participation determination. (3-15-22)

d. Schools. As used in this section, schools refers to any school within a school district or charter district and public charter schools. (3-15-22)

i. An elementary school includes a grade configuration of grades Kindergarten (K) through six (6) inclusive, or any combination thereof. (3-15-22)

ii. 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). (3-15-22)

iii. A high school is any school that contains grade twelve (12). (3-15-22)

iv. An alternative high school is any school that contains grade twelve (12) and meets the requirements of Section 110 of these rules. (3-15-22)

v. The accountability of public schools without grades assessed by this system (i.e., K-2 schools) will be based on the third grade test scores of the students who previously attended that feeder school. (3-15-22)

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vi. A “new school” for purposes of accountability is a wholly new entity receiving annual measurable progress determinations for the first time, or a school with a significant student population change as a result of schools being combined or geographic boundaries changing, or a result of successful school restructuring sanctioned by the Office of the State Board of Education. (3-15-22)

e. Subgroups. Scores on the ISAT must be disaggregated and reported by the following subgroups: (3-15-22)

i. Race/Ethnicity - Black/African American, Asian, Native Hawaiian/Pacific Islander, White, Hispanic/Latino Ethnicity, American Indian/Alaska Native. (3-15-22)

ii. Economically disadvantaged - identified through the free and reduced lunch program. (3-15-22)

iii. Students with disabilities - individuals who are eligible to receive special education services through the Individuals with Disabilities Education Act (IDEA). (3-15-22)

iv. Limited English Proficient - individuals who do not score proficient on the state-approved language proficiency test and meet one (1) of the following criteria: (3-15-22)

(1) Individuals whose native language is a language other than English; or (3-15-22)

(2) Individuals who come from environments where a language other than English is dominant; or (3-15-22)

(3) Individuals who are American Indian and Alaskan natives and who come from environments where a language other than English has had a significant impact on their level of English language proficiency, and who, by reason thereof, have sufficient difficulty speaking, reading, writing, or understanding the English language to deny such individuals the opportunity to learn successfully in classrooms, where the language of instruction is English. (3-15-22)

f. Graduation Rate. The graduation rate will be based on the rate of the cohort of students entering grade nine (9) during the same academic year and attending or exiting the school within a four (4) year or five (5) year period as applicable to the measure being determined. In determining the graduation cohort the school year shall include the students who complete graduation requirements prior to the start of the school district or charter schools next fall term. School districts may only report students as having graduated if the student has met, at a minimum, the state graduation requirements, pursuant to Section 105, and will not be returning to the school in following years to complete required academic course work. The State Board of Education will establish a target for graduation. All high schools must meet the target or make sufficient progress toward the target each year, as determined by the State Board of Education. The graduation rate will be disaggregated by the subgroups listed in Subsection 112.05.g. (3-15-22)

g. Additional Academic Indicator. The State Board of Education will establish a target for all additional academic and school quality measures. All schools must maintain or make progress toward the additional academic and school quality measure target each year. The additional academic and school quality measure targets will be disaggregated by the subpopulations listed in Subsection 112.05.g. (3-15-22)

(BREAK IN CONTINUITY OF SECTIONS)