

Idaho State Board of Education

GOVERNING POLICIES AND PROCEDURES

SECTION: I. GENERAL GOVERNING POLICIES AND PROCEDURES

SUBSECTION: L. Appeal Procedures

April 2002

The appeal procedures set forth in this section shall apply to all appeals to the Board where such procedures are not otherwise provided for by the Board Governing Policies and Procedures, the Board's rules, or by law.

Unless specifically provided in the Board's Governing Policies and Procedures, the Board's rules, or by law, appeal to the Board is not a matter of right. The Board has discretion as to whether to hear the appeal. In such cases, the appeal to the Board is not necessary to exhaust administrative remedies for the purposes of judicial review, if such review is available.

1. Appeals to the Board

- a. To initiate an appeal to the Board, the appellant shall file a notice of appeal, plus eleven (11) copies, with the Board no later than twenty-one (21) days following the final action that is the subject of the appeal. Such notice of appeal shall include; the name, address, and telephone number of the appellant and a reasonable description of the subject matter of the appeal, and shall have attached thereto the written notice of final action upon which the appeal is based.
- b. All appeals shall be filed at the Office of the State Board of Education (650 W. State St., Third Floor, P.O. Box 83720, Boise, ID 83720-0037).
- c. If the Board has discretion whether to hear the appeal, then within seventy (70) days after receipt of such notice of appeal the Board shall determine whether to hear the appeal. If the Board denies the request for an appeal, then the Board shall notify the appellant accordingly in writing.
- d. If the Board agrees to hear the appeal, or if the appeal is not discretionary, the Board shall provide written notice of the approved appeal to the appellant. Such notice shall set forth whatever procedures and conditions for the appeal the Board deems appropriate. Unless inconsistent with the procedures and conditions set by the Board for a particular case, the Board may conduct such appeals consistent with IDAPA 08.01.01.050.
- e. The decision being appealed shall be in full force and effect during the appeal process, including the request for appeal, and shall not be held in abeyance.

2. Appeals for Charter Schools Establishment

Appeals for the establishment of a charter school pursuant to Idaho Code Section 33-5207(5)(b) shall be held pursuant to the procedures set forth in the following subsection and not pursuant to IDAPA 08.01.01.050, IDAPA 04.11.01, and Chapter 52, Title 67, Idaho Code.

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- a. The petitioner/appellant shall file a notice of appeal with the Board as provided in Section I.L.1. above. In addition to the requirements in said section, the notice of appeal shall include the following: the name, address, and telephone number of the local board of trustees that denied the charter school application; and a copy of the official minutes of the meeting of the local board meeting at which the charter school application was denied.

- b. The Board shall deliver written notice of the appeal to the petitioner/appellant requesting the appeal and the local board of trustees that denied the petition. Pursuant to Idaho law, such notice shall be in writing and delivered by first class mail to the parties at least five (5) days prior to the hearing that will be set at the Board's next regularly scheduled meeting. Provided, however, if the appeal request is received by the Board at such time that timely notice cannot be given, or that the requirements of the open meetings law prevent the appeal from being heard at the first next regularly scheduled Board meeting, then such appeal shall be heard at the regularly scheduled Board meeting immediately following the first next regularly scheduled Board meeting.

- c. The Board shall, at its discretion, conduct the appeal in one of the following methods:
 - (1) Subject to the provisions in sub-topic b., above, the Board shall, at its next regular meeting, hold a hearing for the review of the establishment of the new charter school. Such appeal shall be held in appellate format and shall not constitute a hearing as provided in the Idaho Administrative Procedure Act. The Board shall allow the representatives of the petitioner/appellant and the representatives of the local school board no more than one half hour (30 minutes) each to present their arguments.

 - (2) Appoint a hearing officer to hear the appeal arguments as set forth in paragraph (1) above. The hearing officer shall then submit a complete copy of the record, along with a recommended order, to the Board for review at the Board's next regularly scheduled meeting. If the Board selects a hearing officer, all other provisions of this topic shall apply in full as if no hearing officer had been appointed.

- d. Any written material submitted by the petitioner/appellant or by the local school board must be filed with the Board office, plus eleven (11) copies, no later than seven (7) days prior to the meeting at which the public hearing is scheduled.

- e. The Board shall only consider material that was presented at prior proceedings regarding the petition to establish the new charter school. The Board shall not accept any evidence, testimony, documents, or other material regarding the petition to establish the new charter school other than the materials submitted in advance as provided above and the testimony presented at the public hearing.

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The petitioner/appellant must, at their own expense, include a transcript of the hearing officer's hearing as provided for in Idaho Code 33-5207(2). In addition, a copy of the hearing officer's recommendation must be included by the petitioner/appellant. All written materials submitted to the Board prior to the public hearing, excluding the transcripts and copy of the hearing officer's recommendation, are limited to fifty (50) single sided 8 ½ x 11 inch pages, double spaced type, including all attachments and exhibits.

- f. The Board shall only approve the charter for the establishment of a new charter school if it determines one of the two following criteria has been met:
 - (1) If the Board determines that the local board of trustees failed to appropriately consider the charter request; or
 - (2) If the Board determines that the local board of trustees acted in an arbitrary manner in denying the request.
- g. The Board shall review the appeal solely to make one of the two above noted determinations and for no other purpose.
- h. The Board shall issue its determination by a written order within fifty-six (56) days following the appellate hearing. Such order shall conform to the requirements of Chapter 52, Title 67, Idaho Code.