

Dear Senators LENT, Toews, Ward-Engelking, and  
Representatives YAMAMOTO, McCann, Berch:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the  
State Board of and State Department of Education:

IDAPA 08.02.03 - Rules Governing Thoroughness - Proposed Rule (Docket No. 08-0203-2301);

IDAPA 08.04.01 - Rules of the Idaho Digital Learning Academy (ZBR Chapter Rewrite) - Proposed  
Rule (Docket No. 08-0401-2301).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the  
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research  
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative  
Services. The final date to call a meeting on the enclosed rules is no later than 11/06/2023. If a meeting is  
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis  
from Legislative Services. The final date to hold a meeting on the enclosed rules is 12/04/2023.

The germane joint subcommittee may request a statement of economic impact with respect to a  
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,  
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has  
been held.

To notify Research and Legislation, call 334-4854, or send a written request to the address on the  
memorandum attached below.



**Terri Kondeff**  
Director

# Legislative Services Office

## Idaho State Legislature

*Serving Idaho's Citizen Legislature*

### MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Education Committee and the House Education Committee

**FROM:** Legislative Drafting Attorney - Trevor Ahrens

**DATE:** October 17, 2023

**SUBJECT:** State Board of and State Department of Education

IDAPA 08.02.03 - Rules Governing Thoroughness - Proposed Rule (Docket No. 08-0203-2301)

IDAPA 08.04.01 - Rules of the Idaho Digital Learning Academy (ZBR Chapter Rewrite) - Proposed Rule (Docket No. 08-0401-2301)

#### **Summary and Stated Reasons for the Rule**

The State Board of Education submits notice of proposed rule making relating to education. Docket No. 08-0401-2301 reviews chapter 08.04.01 - Rules of the Idaho Digital Learning Academy to simply the chapter and to modify rules regarding exams. Docket No. 08-0203-2301 considers removal of a duplicative satisfaction and engagement survey for alternative high schools and technical edits.

#### **Negotiated Rulemaking / Fiscal Impact**

The agency states that negotiated rulemaking was conducted for both dockets in the June 2023 Idaho Administrative Bulletin. Docket number 08-0203-2301 was published in Volume 23-6, page 46 and Docket No. 08-0401-2301 was published in Volume 23-6, page 48. No fiscal impact is expected under either docket.

#### **Statutory Authority**

The proposed rules in Docket 08-0203-2301 appear to be within the agency's statutory authority pursuant to Article IX, Section 2 of the Idaho Constitution and sections 33-105, 33-116, 33-118, and 33-1612 of Idaho Code. The proposed rules in Docket 08-0401-2301 appear to be within the agency's statutory authority pursuant to Article IX, Section 2 of the Idaho constitution and sections 33-5504, 33-5505, 33-5507, and Chapter 55, Title 33, Idaho Code.

cc: State Board of and State Department of Education  
Nicholas Wagner

\*\*\* PLEASE NOTE \*\*\*

Paul Headlee, Deputy Director    Matt Drake, Manager    Keith Bybee, Manager    April Renfro, Manager    Norma Clark, Manager  
Legislative Services Office    Research & Legislation    Budget & Policy Analysis    Legislative Audits    Information Technology

Statehouse, P.O. Box 83720  
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Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

**IDAPA 08 – STATE BOARD OF EDUCATION**

**08.02.03 – RULES GOVERNING THOROUGHNESS**

**DOCKET NO. 08-0203-2301**

**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The 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.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2023.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

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.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: NA

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: None

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 2023 Idaho Administrative Bulletin, [Volume 23-6, page 46](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Nicholas Wagner at [rules@osbe.idaho.gov](mailto:rules@osbe.idaho.gov) or (208)-488-7586.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2023.

DATED this 25th day of August, 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

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0203-2301**  
**(Only Those Sections With Amendments Are Shown.)**

**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)

**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)~~
  - ~~f. 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 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)

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)



**IDAPA 08 – STATE BOARD OF EDUCATION**  
**08.04.01 – RULES OF THE IDAHO DIGITAL LEARNING ACADEMY**  
**DOCKET NO. 08-0401-2301 (ZBR CHAPTER REWRITE)**  
**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Article IX, Section 2 of the Idaho Constitution and under sections 33-5504, 33-5505, 33-5507, and Chapter 55, Title 33, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2023.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

In accordance with Executive Order 2020-01, this rulemaking will be a review of the chapter for evaluation on how it can be improved, simplified, and streamlined. Additional amendments include the restructured language to subsection 102.01, to allow for proctored exams to be complete with the added discretion of the LEA, also added that an exam can be allowed as a comprehensive final project. Amendments to remove language from sections and add them to IDLA policy.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: NA

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking: None

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 2023 Idaho Administrative Bulletin, [Volume 23-6, page 48](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: NA

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Nicholas Wagner at [rules@osbe.idaho.gov](mailto:rules@osbe.idaho.gov) or (208)-488-7586.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2023.

DATED this 25th day of August, 2023.

Nicholas Wagner  
Administrative Rules Coordinator  
Idaho State Board of Education  
650 W State St.  
PO Box 83720  
Boise, Idaho 83720-0037  
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0401-2301  
(ZBR Chapter Rewrite)

08.04.01 – RULES OF THE IDAHO DIGITAL LEARNING ACADEMY

000. LEGAL AUTHORITY.

~~In accordance with Sections 33-5504, 33-5505, and 33-5507, Idaho Code, the Board is authorized to promulgate rules implementing the provisions of Title 33, Chapter 55, Idaho Code.~~ (3-15-22)( )

001. SCOPE.

These rules provide the requirements for the governance and administration of the Idaho Digital Learning Academy's Board of Directors. ( )

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. **Acceptable Use Policy (AUP).** An Acceptable Use Policy ~~is a policy that~~ governs behavior in a ~~computer or online~~ virtual environment. ~~An Acceptable Use Policy outlines by establishing guidelines for~~ appropriate and inappropriate behavior, ~~including specific examples of inappropriate behavior as well as the~~ and establishing consequences of ~~violating the~~ policy violation. ~~Acceptable use AUP guidelines include, but are not limited to, guidelines those~~ pertaining to the use of profanity or threatening language, copyright violations, revealing personal information (~~either their one's~~ own or someone else's), disrupting the ~~use of a~~ school network, or importation of sexually explicit, drug-related, ~~and or~~ other offensive materials into the ~~course~~ virtual environment. (3-15-22)( )

011. -- 100. (RESERVED)

101. ACCREDITATION.

IDLA must maintain accreditation by an organization recognized by the State Board of Education. ( )

102. ACCOUNTABILITY.

01. **Exams.** Each IDLA course will require the student to ~~take complete, at the discretion of the LEA,~~ either a comprehensive final exam at an approved site under proctored conditions or a comprehensive final project. (3-15-22)( )

02. **Student Work and Ethical Conduct.** ( )

**a.** IDLAs board of directors will adopt an acceptable use policy. ( )

**ab.** IDLA will ~~inform~~ provide students ~~in writing of the consequences of plagiarism and parents a copy of the IDLA AUP prior to beginning each class.~~ The consequences for plagiarism are set out in the IDLA student handbook which is made available online at all times and is communicated to each student and parent prior to the beginning of each class. IDLA will investigate suspected ~~cases of plagiarism~~ policy violations and inform parents, students, and the local school district when a suspected case arises. (3-15-22)( )

**bc.** Acceptable use and behavior in a ~~distance learning~~ virtual environment is determined by local school district's policies ~~IDLA students and parents will be informed by the IDLA AUP specifically governing behavior in an online school and supplemented by the IDLA AUP.~~ IDLA will provide a copy of the IDLA AUP to the Idaho State Board of Education in the IDLA Annual Report. (3-15-22)( )

**ed.** In a case of violation of the ~~acceptable use policy~~ **AUP** or other disciplinary issues, IDLA will notify the local school district. The local school district is responsible for the appropriate disciplinary action. IDLA should be notified by the local school district of any disciplinary action resulting from a student's participation in an IDLA course. (3-15-22)( )

~~d.~~ The IDLA Director or designee reserves the right to deny disruptive students access to IDLA courses in the future or remove them from participating in an existing course. Appeals to the denial or removal from a course may be made in writing to the IDLA Board of Directors discussing the circumstances for removal or denial. The IDLA Board of Directors will review the appeal and hold a special board meeting to allow the student an opportunity to speak to the issue. The IDLA Board of Directors will issue a final decision within ten (10) days of the board meeting. (3-15-22)

**03. ~~Teacher Interaction~~ Academic Reporting.** IDLA faculty are required to contact students within the first twenty four (24) hours of class. Contact includes phone, e mail, web conferencing, or other technological means. IDLA is required to submit periodic progress reports and final course percentages for individual students' grades which are then reported for each student to the local school district for transcription to the student's academic record. (3-15-22)( )

**103. FEES.**  
The IDLA fee schedule will be provided to the Idaho State Board of Education in the IDLA Annual Report to the State Board of Education. ( )

**104. -- 999. (RESERVED)**