

Dear Senators MORTIMER, Thayn, Buckner-Webb, and  
Representatives VANORDEN, McDonald, Kloc:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the State Board of and State Department of Education - State Department of Education:  
IDAPA 08.02.03 - Rules Governing Thoroughness - Proposed Rule (Docket No. 08-0203-1801).

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 08/24/2018. 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 09/24/2018.

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 334-4834, or send a written request to the address on the memorandum attached below.



Eric Milstead  
Director

# Legislative Services Office

## Idaho State Legislature

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*Serving Idaho's Citizen Legislature*

### MEMORANDUM

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

**FROM:** Principal Legislative Research Analyst - Elizabeth Bowen

**DATE:** August 08, 2018

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

IDAPA 08.02.03 - Rules Governing Thoroughness - Proposed Rule (Docket No. 08-0203-1801)

#### Summary and Stated Reasons for the Rule

This proposed rule incorporates by reference the most recent version of the Idaho Special Education Manual, which was adopted by the State Board of Education on June 20, 2018. Changes to the manual were made to conform to state and federal law.

#### Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was conducted. There is no anticipated fiscal impact on the state general fund.

#### Statutory Authority

I.C. 33-105, 33-1612, and 33-2002.

cc: State Board of and State Department of Education - State Department of Education  
Helen Price

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

Per the Idaho Constitution, all administrative rules must 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 AND STATE DEPARTMENT OF EDUCATION

## 08.02.03 – RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-1801

### 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 Sections 33-105, 33-1612 and 33-2002, 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 August 15, 2018.

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:

This rulemaking amends the adoption date of the Idaho Special Education Manual (Manual), an incorporated document. Modifications to the Manual are necessary to ensure compliance with IDAPA, Idaho Code, the Individuals with Disabilities Education Act (IDEA), the Every Student Succeeds Act (ESSA), and recent court decisions. Substantive amendments to Manual, approved by the Idaho State Board of Education on June 20, 2018, include: aligning the definition of a Free and Appropriate Public Education to recent United States Supreme Court decisions and language describing the development of a student’s individualized education program; amending the “Visual Impairment Including Blindness” eligibility criteria based on non-exclusionary guidance from the Office of Special Education; updating the eligibility category of “Emotional Disturbance” to “Emotional Behavioral Disorder”; defining significant cognitive impairments and revising alternate assessment participation criteria for clarity as required by ESSA; clarifying that “objectives and benchmarks” are required for students taking alternative assessments; clarifying provisions for transition planning, postsecondary goal setting, and discontinuation of services; revising private school consultations and processes for resolving disputes; making minor language changes in Chapter 4 for “Developmental Delay”; clarifying the Idaho Special Education Results Driven Accountability Monitoring System; revising disciplinary procedures to comply with IDEA; and updating dispute resolution procedures and processes with present standards of practice and IDEA.

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

**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 resulting from this rulemaking: N/A

**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 February 7, 2018, Idaho Administrative Bulletin, [Volume 18-2, page 27](#).

**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: The Idaho Special Education Manual is currently incorporated by reference. Because of the number of pages within the document, the republication of the text would be unduly cumbersome and expensive. A complete copy of the proposed changes to the Idaho Special Education Manual can be found on the State Department of Education’s website at <http://sde.idaho.gov/topics/admin-rules/>.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Dr. Charlie Silva, Director of Special Education, at (208) 332-6806 or [csilva@sde.idaho.gov](mailto:csilva@sde.idaho.gov).

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 August 22, 2018.

DATED this 20th Day of June, 2018.

Sherri Ybarra  
Superintendent of Public Instruction  
650 W State Street, 2nd Floor  
PO Box 83720  
Boise ID 83720-0027  
Office: (208) 332-6800  
Fax: (208) 334-2228

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0203-1801  
(Only Those Sections With Amendments Are Shown.)**

**004. INCORPORATION BY REFERENCE.**

The following documents are incorporated into this rule: (3-30-07)

**01. The Idaho Content Standards.** The Idaho Content Standards as adopted by the State Board of Education. Individual subject content standards are adopted in various years in relation to the curricular materials adoption schedule. Copies of the document can be found on the State Board of Education website at <https://boardofed.idaho.gov>. (3-29-10)

- a.** Arts and Humanities Categories: (3-24-17)
  - i. Dance, as revised and adopted on August 11, 2016; (3-24-17)
  - ii. Interdisciplinary Humanities, as revised and adopted on August 11, 2016; (3-24-17)
  - iii. Media Arts, as adopted on August 11, 2016. (3-24-17)
  - iv. Music, as revised and adopted on August 11, 2016; (3-24-17)
  - v. Theater, as revised and adopted on August 11, 2016; (3-24-17)
  - vi. Visual Arts, as revised and adopted on August 11, 2016; (3-24-17)
  - vii. World languages, as revised and adopted on August 11, 2016. (3-24-17)
- b.** Computer Science, adopted on November 28, 2016. (3-24-17)
- c.** Driver Education, as revised and adopted on August 10, 2017. (3-28-18)
- d.** English Language Arts/Literacy, as revised and adopted on November 28, 2016. (3-24-17)
- e.** Health, as revised and adopted on August 11, 2016. (3-24-17)
- f.** Information and Communication Technology, as revised and adopted on August 10, 2017. (3-28-18)
- g.** Limited English Proficiency, as revised and adopted on August 21, 2008. (3-29-10)

- h.** Mathematics, as revised and adopted on August 11, 2016. (3-24-17)
- i.** Physical Education, as revised and adopted on August 11, 2016. (3-24-17)
- j.** Science, as revised and adopted on August 10, 2017. (3-28-18)
- k.** Social Studies, as revised and adopted on November 28, 2016. (3-24-17)
- l.** College and Career Readiness Competencies adopted on June 15, 2017. (3-28-18)
- m.** Career Technical Education Categories: (3-29-17)
  - i.** Agricultural and Natural Resources, as revised and adopted on August 31, 2017. (3-28-18)
  - ii.** Business and Marketing Education, as revised and adopted on August 31, 2017. (3-28-18)
  - iii.** Engineering and Technology Education, as revised and adopted on August 31, 2017. (3-28-18)
  - iv.** Health Sciences, as adopted on August 31, 2017. (3-28-18)
  - v.** Family and Consumer Sciences, as revised and adopted on August 31, 2017. (3-28-18)
  - vi.** Skilled and Technical Sciences, as revised and adopted on August 31, 2017. (3-28-18)
  - vii.** Workplace Readiness, as adopted on June 16, 2016. (3-29-17)
- 02. The English Language Development (ELD) Standards.** The World-Class Instructional Design and Assessment (WIDA) 2012 English Language Development (ELD) Standards as adopted by the State Board of Education on August 16, 2012. Copies of the document can be found on the WIDA website at [www.wida.us/standards/eld.aspx](http://www.wida.us/standards/eld.aspx). (4-4-13)
- 03. The Limited English Proficiency Program Annual Measurable Achievement Objectives (AMAOs) and Accountability Procedures.** The Limited English Proficiency Program Annual Measurable Achievement Objectives and Accountability Procedures as adopted by the State Board of Education on November 11, 2009. Copies of the document can be found on the State Department of Education website at [www.sde.idaho.gov](http://www.sde.idaho.gov). (4-7-11)
- 04. The Idaho English Language Proficiency Assessment (ELPA) Achievement Standards.** The Idaho English Language Proficiency Assessment (ELPA) Achievement Standards as adopted by the State Board of Education on October 18, 2017. Copies of the document can be found on the State Board of Education website at <https://boardofed.idaho.gov>. (3-28-18)
- 05. The Idaho Standards Achievement Tests (ISAT) Achievement Level Descriptors.** Achievement Level Descriptors as adopted by the State Board of Education on April 14, 2016. Copies of the document can be found on the State Board of Education website at <https://boardofed.idaho.gov>. (3-29-17)
- 06. The Idaho Extended Content Standards.** The Idaho Extended Content Standards as adopted by the State Board of Education on August 10, 2017. Copies of the document can be found at the State Board of Education website at <https://boardofed.idaho.gov>. (3-28-18)
- 07. The Idaho Content Standards Core Content Connectors.** The Idaho Content Standards Core Content Connectors as adopted by the State Board of Education on August 10, 2017. Copies of the document can be found at the State Board of Education website at <https://boardofed.idaho.gov>. (3-28-18)
  - a.** English Language Arts, as adopted by the State Board of Education on August 10, 2017. (3-28-18)
  - b.** Mathematics, as adopted by the State Board of Education on August 10, 2017. (3-28-18)

**08. The Idaho Alternate Assessment Achievement Standards.** Alternate Assessment Achievement Standards as adopted by the State Board of Education on October 18, 2017. Copies of the document can be found on the State Board of Education website at <https://boardofed.idaho.gov>. (3-28-18)

**09. The Idaho Standards for Infants, Toddlers, Children, and Youth Who Are Deaf or Hard of Hearing.** As adopted by the State Board of Education on October 11, 2007. Copies of the document can be found on the State Board of Education website at <https://boardofed.idaho.gov>. (4-2-08)

**10. The Idaho Standards for Infants, Toddlers, Children, and Youth Who Are Blind or Visually Impaired.** As adopted by the State Board of Education on October 11, 2007. Copies of the document can be found on the State Board of Education website at <https://boardofed.idaho.gov>. (4-2-08)

**11. The Idaho Special Education Manual.** The Idaho Special Education Manual as adopted by the State Board of Education on ~~August 10, 2017~~ June 20, 2018. Copies of the document can be found on the State Board of Education website at <https://boardofed.idaho.gov>. (~~3-28-18~~)(    )

## INCORPORATION BY REFERENCE SYNOPSIS

In compliance with Section 67-5223(4), Idaho Code, the following is a synopsis of the differences between the materials previously incorporated by reference in this rule that are currently of full force and effect and newly revised or amended versions of these same materials that are being proposed for incorporation by reference under this rulemaking.

The following agency of the state of Idaho has prepared this synopsis as part of the proposed rulemaking for the chapter cited here under the docket number specified:

**STATE BOARD AND STATE DEPARTMENT OF EDUCATION**  
**IDAPA 08.02.03 - Rules Governing Thoroughness**  
**Proposed Rulemaking - Docket No. 08-0203-1801**

The updated Manual eliminates the Acknowledgements as well as documents, charts, forms or guidance documents from the Manual. It aligns the definition of a Free and Appropriate Public Education (FAPE) to recent United States Supreme Court Decisions and language describing the development of a student's IEP. The Manual also replaces the outdated term "Emotional Disturbance" with "Emotional Behavioral Disorder." Other changes to the Manual include minor language corrections or deletions necessary to maintain document consistency and to align with IDAPA, Idaho Code, the Individuals with Disabilities Education Act (IDEA), the Every Student Succeeds Act (ESSA), and recent court decisions.

Acronyms and Abbreviations: Updated the Acronyms and Abbreviations to reflect only the terms used in the Manual.

Glossary: Updated the Glossary to define terms presently used in the Manual including new terms required under ESSA.

Chapter 4: Amended the "Visual Impairment Including Blindness" eligibility criteria based on non-exclusionary guidance from the Office of Special Education Programs; updated the eligibility category of "Emotional Disturbance" to "Emotional Behavioral Disorder"; made minor language changes in Chapter 4 for "Developmental Delay."

Chapter 5: Clarified that "objectives and benchmarks" are required for students taking alternate assessments; defined significant cognitive impairments and revised alternate assessment participation criteria for clarity as required by ESSA.

Chapter 7: Clarified provisions for transition planning, postsecondary goal setting, and the discontinuation of services; eliminated references to a regular high school diploma to reflect Idaho's one high school graduation diploma.

Chapter 9: Revised private school consultations and processes for resolving disputes.

Chapter 10: Clarified the Idaho Special Education Results Driven Accountability Monitoring System (RDA).

Chapter 12: Revised disciplinary procedures to comply with IDEA.

Chapter 13: Updated dispute resolution procedures and processes with present standards of practice and IDEA.