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Legislative Services Office Idaho State Legislature

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MEMORANDUM

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

FROM: Peter Cook - Senior Legislative Drafting Attorney

DATE: October 15, 2024

SUBJECT: Temporary Rule

IDAPA 08.02.03 - Rules Governing Thoroughness - Adoption of Temporary Rule - Docket No.
08-0203-2403

We are forwarding this temporary rule to you for your information only. No analysis was done by LSO. This rule is posted on our web site. If you have any questions, please call Peter Cook at the Legislative Services Office at (208) 334-4845. Thank you.

Attachment: Temporary Rule

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IDAPA 08 – STATE BOARD OF EDUCATION

08.02.03 – RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-2403

NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 21, 2024.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Sections 33-105, 33-116, 33-118, and 33-1612, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

The rule will be updated to reflect that the Board adopted revisions to the Special Education Manual on June 12, 2024. The Special Education Manual is incorporated by reference into IDAPA 08.02.03. The proposed amendments to the Idaho Special Education Manual include updates primarily regarding student eligibility to receive services.

Additionally several sets of content standards, which are incorporated by reference into IDAPA 08.02.03, were due for review during the 2023-2024 school year and the revisions proposed by the committee work have been adopted by the Board. These approval dates need to be updated in the rule. Content standards that were revised include: Arts and Humanities, Computer Science, Information and Communication Technology, Driver Education, and Social Studies.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1) (b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

In December of 2023, the Idaho Department of Education (IDE) was informed by letter from the U.S. Office of Special Education Programs (OSEP) that the Idaho Special Education Manual needed revision. The IDE recently completed the revision, including public comment period. It is necessary to pursue a temporary rule to ensure that schools begin the school year with a compliant special education manual. The document is incorporated by reference into IDAPA 08.02.03, and therefore no resolution can be achieved without amendment to the rule. It is proposed that subsection 109 be removed as all of the information is included in the manual which is incorporated by reference. There is no need for the information to be repeated.

Additionally, this is the second Temp Rule for 08.02.03 in the 2024-25 rulemaking cycle. The new temp rule carries over the updates to the content standards previously approved in the Temp Rule (08-0203-2402) approved by the Board at the June 12, 2024 meeting. The updates in the previous temporary rule are regarding content standards that are incorporated by reference into IDAPA 08.02.03. IDAPA 08.02.03 must be updated to reflect adopted revisions to the documents incorporated by reference.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: NA

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Nicholas Wagner at rules@edu.idaho.gov or (208)-488-7586).

DATED this 30th day of August, 2024.

Nicholas Wagner
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THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 08-0203-2403
(Only Those Sections With Amendments Are Shown.)

08.02.03 – RULES GOVERNING THOROUGHNESS

004. INCORPORATION BY REFERENCE.

The following documents are incorporated into this rule: (3-15-22)

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>. (3-15-22)

- a.** Arts and Humanities Categories: (3-15-22)
 - i.** Dance, as revised and adopted on June 12, 2024; (7-1-24)T
 - ii.** Interdisciplinary Humanities, as revised and adopted on June 12, 2024; (7-1-24)T
 - iii.** Media Arts, as adopted on June 12, 2024. (7-1-24)T
 - iv.** Music, as revised and adopted on June 12, 2024; (7-1-24)T
 - v.** Theater, as revised and adopted on June 12, 2024; (7-1-24)T
 - vi.** Visual Arts, as revised and adopted on June 12, 2024; (7-1-24)T
 - vii.** World languages, as revised and adopted on June 12, 2024. (7-1-24)T
- b.** Computer Science, adopted on June 12, 2024. (7-1-24)T
- c.** Driver Education, as revised and adopted on June 12, 2024. (7-1-24)T
- d.** Health, as revised and adopted on August 24, 2022. (4-6-23)
- e.** Information and Communication Technology, as revised and adopted on August 10, 2017. (3-15-22)
- f.** Physical Education, as revised and adopted on August 24, 2022. (4-6-23)
- g.** Social Studies, as revised and adopted on June 12, 2024. (7-1-24)T
- h.** College and Career Readiness Competencies adopted on June 15, 2017. (3-15-22)

02. 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>. (3-15-22)

03. 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>. (3-15-22)

04. The Idaho Special Education Manual. The Idaho Special Education Manual as adopted by the State Board of Education on ~~October 17, 2018~~ August 21, 2024. Copies of the document can be found on the State Board of Education website at <https://boardofed.idaho.gov>. ~~(3-15-22)~~ (8-21-24)T

(BREAK IN CONTINUITY OF SECTIONS)

109. SPECIAL EDUCATION.

- 01. Definitions.** The following definitions apply only to Section 109 of these rules. (3-15-22)
- ~~a. Adult Student. A student who is eligible for special education, is eighteen (18) years of age or older and to whom special education rights have transferred. (3-15-22)~~
 - ~~b. Due Process Hearing. An administrative hearing that is conducted to resolve disputes. (3-15-22)~~
 - ~~i. Regular due process hearing regarding issues on any matter related to identification, evaluation, placement, or the provision of a free appropriate public education. (3-15-22)~~
 - ~~ii. For disputes concerning discipline for which shortened time lines are in effect, an expedited due process hearing may be requested in accordance with the Individuals with Disabilities Education Act. (3-15-22)~~
 - ~~c. Education Agency. Each school district and other public agency that is responsible for providing special education and related services to students with disabilities, including the Department of Juvenile Corrections and the Idaho School for the Deaf and Blind. (3-15-22)~~
 - ~~d. Idaho Special Education Manual. Policies and procedures, as approved by the State Board of Education, that the State Department of Education is required to adopt to meet the eligibility requirements of 20 U.S.C, Section 1412 and are consistent with state and federal laws, rules, regulations, and legal requirements. (3-15-22)~~
 - ~~e. Special Education. Specially designed instruction as defined by the Individuals with Disabilities Education Act or speech language pathology services to meet the unique needs of a special education student. (3-15-22)~~
- 02. Legal Compliance.** The State Department of Education and education agencies shall comply with all laws governing special education requirements. (3-15-22)
- ~~a. The Board of Trustees or other comparable governing body of each education agency shall adopt policies and procedures for providing special education services and obtain approval from the State Department of Education for the same. Department approval shall be based on current governing special education requirements. Each education agency shall revise its policies and procedures as necessary to conform with changes in governing special education requirements. (3-15-22)~~
 - ~~b. The State Department of Education shall provide education agencies with a sample set of policies and procedures that is consistent with governing special education requirements. The Department shall monitor all education agencies and private agencies who provide special education services to students with disabilities for compliance with governing special education requirements and adopted policies and procedures. (3-15-22)~~
 - ~~c. Each education agency shall ensure that charter schools and alternative schools located in its jurisdiction have nondiscriminatory enrollment practices. Each education agency shall ensure the provision of special education and related services to eligible students enrolled in charter and alternative schools in accordance with governing special education requirements. (3-15-22)~~
 - ~~d. Each education agency contracting with a private school or facility shall ensure that the private school or facility is approved by the State Department of Education to provide special education services. The~~

~~Department may approve a private school or facility to provide special education services upon application to the Department if it:~~ (3-15-22)

- ~~i. Is an accredited school or a licensed rehabilitation center; and~~ (3-15-22)
- ~~ii. Meets minimum health, fire and safety standards; and~~ (3-15-22)
- ~~iii. Is nonsectarian; and~~ (3-15-22)
- ~~iv. Provides special education services consistent with governing special education requirements.~~ (3-15-22)
- ~~v. Any private school or facility aggrieved by the Department's final decision may appeal that decision to the State Board of Education.~~ (3-15-22)

~~e. Education agencies shall employ special education and related services professional personnel using certification standards approved by the State Board of Education or licensing standards adopted by the appropriate Idaho state licensing board. Education agencies shall employ individuals who meet the highest entry-level standard that applies to a specific discipline unless there is a shortage of fully qualified candidates for a specific position. If there is a shortage of fully qualified candidates, the education agency shall hire the most qualified individual available who is making satisfactory progress toward meeting the highest entry-level standard within three (3) years.~~ (3-15-22)

~~f. Education agencies may employ paraprofessional personnel to assist in the provision of special education and related services to students with disabilities if they meet standards established by the State Department of Education.~~ (3-15-22)

~~g. Education agencies shall collect and report data as necessary to meet state and federal requirements concerning special education services, staff or students. Education agencies shall develop, implement and revise district improvement plans as necessary to improve results as measured by data on goals and indicators for the performance of special education students that are established by the State Department of Education in accordance with the Individuals with Disabilities Education Act.~~ (3-15-22)

~~h. Education agencies shall establish a team process to problem solve and plan general education interventions to ensure that referrals to special education are appropriate.~~ (3-15-22)

~~**03. Eligibility for Special Education.** The State Department of Education shall provide state eligibility criteria for special education services for categorical eligibility consistent with the Individuals with Disabilities Education Act. Education agencies shall consider eligibility under all disability categories set forth in the Idaho Special Education Manual with the exception of developmental delay, which is an optional category. If an education agency elects to use the developmental delay category, it shall consider developmental delay for students ages three (3) through nine (9) using the eligibility criteria adopted by the Department and set forth in the Idaho Special Education Manual. The total timeline from the date of receipt of written parental consent for an initial evaluation to the date of determination of eligibility for special education and related services must not exceed sixty (60) calendar days, excluding periods when regular school is not in session for five (5) or more consecutive school days, unless all parties agree to an extension.~~ (3-15-22)

~~**04. Individualized Education Programs.** Each education agency shall develop an individualized education program (IEP) for each student who is eligible for special education. The IEP shall be implemented as soon as possible after it is developed. The total timeline from the determination that the student needs special education and related services to the date of implementation of the initial IEP shall not exceed thirty (30) calendar days. A new IEP shall be developed at least annually, on or before the date the previous IEP was developed.~~ (3-15-22)

~~a. IEP team meetings shall be convened upon reasonable request of any IEP team member at times other than the annual review. If the education agency refuses to convene an IEP team meeting requested by a parent or adult student, the agency shall provide written notice of the refusal.~~ (3-15-22)

~~b.~~ Education agencies shall document the attendance of all participants at each IEP team meeting. Any participant who does not agree with an IEP team decision regarding a student's educational program may place a minority report in that student's file. A minority report shall not prevent implementation of an IEP team decision. (3-15-22)

~~e.~~ The IEP team shall determine the student's placement in the least restrictive environment. (3-15-22)

~~d.~~ At the discretion of the education agency, an individualized family service plan (IFSP) may be used in place of an IEP if: (3-15-22)

~~i.~~ The child is ages three (3) through five (5), and (3-15-22)

~~ii.~~ The child's parents are provided with a detailed explanation of the differences between an IFSP and an IEP, and (3-15-22)

~~iii.~~ The child's parents provide written consent to use the IFSP, and (3-15-22)

~~iv.~~ The IFSP is developed in accordance with IDEA Part B policies and procedures. (3-15-22)

~~v.~~ Nothing in this part requires education agencies to develop IFSPs rather than IEPs for three (3) through five (5) year old nor to implement more than the educational components of the IFSP. (3-15-22)

~~e.~~ When a student who has been determined eligible for special education, as indicated by a current IEP, transfers from one (1) Idaho education agency to another, the student is entitled to continue to receive special education services. The receiving education agency may accept and implement the existing IEP or may convene an IEP team meeting to develop a new IEP. If a new IEP cannot be developed within five (5) school days, or if the education agency wishes to re-evaluate the child, an interim (short-term) IEP shall be implemented pending development of the standard IEP. (3-15-22)

~~f.~~ If a student who is eligible for special education in another state transfers to an Idaho education agency, the Idaho education agency shall request a copy of the student's most recent eligibility documentation and IEP within two (2) school days. Within five (5) school days of receipt of the eligibility documentation and IEP, the Idaho education agency shall determine if it will adopt the existing eligibility documentation and IEP. If the education agency disagrees with the existing eligibility documentation, or if the documentation is not available within a reasonable time period, consent for an initial assessment shall be sought. While the assessment and evaluation is in process, the education agency may implement an interim IEP if the parent or adult student agrees. If the parent or adult student does not agree to an interim IEP, the student shall be placed in general education. (3-15-22)

~~05. Procedural Safeguards.~~ Education agencies will use appropriate procedural safeguards consistent with the Individuals with Disabilities Education Act. (3-15-22)

~~a.~~ If a parent or adult student disagrees with an individualized education program (IEP) team's proposed IEP for the student, the parent or adult student may file a written objection to all or parts of the proposed IEP. If the written objection is emailed, postmarked or hand delivered within ten (10) calendar days of the date the parent or adult student receives written notice of the proposed IEP, the proposed change cannot be implemented for fifteen (15) calendar days, or as extended through mutual agreement by the district and the parent or adult student while the parties work to resolve the dispute. Parties may choose to hold additional IEP team meetings which may be facilitated by the State Department of Education (SDE) or request voluntary mediation through the SDE. If these methods fail or are refused, the proposed IEP shall be implemented after fifteen (15) calendar days unless a due process hearing is filed by the parents or adult student, during which time the student shall remain in the current educational placement during the pendency of any administrative or judicial proceeding, unless the district/adult student agree otherwise. The written objection cannot be used to prevent the education agency from placing a student in an interim alternative educational setting in accordance with IDEA discipline procedures, or to challenge an eligibility/identification determination. (3-15-22)

~~b.~~ Mediation may be requested by an education agency, parent, or adult student, or offered by the

~~State Department of Education at any time. The Department shall screen all such requests to determine appropriateness. Any time a hearing is requested, the Department shall offer mediation using policies and requirements set forth in the Individuals with Disabilities Education Act regulations. If the Department appoints a mediator, the Department shall be responsible for compensating the mediator. All mediation participants will receive a copy of the Notification of Mediation Confidentiality form. Attorney fees may not be awarded for a mediation that is conducted prior to a request for a due process hearing. (3-15-22)~~

~~e. The State Department of Education shall administer a single tiered due process hearing system to resolve disputes between education agencies and parents or adult students. When a due process hearing is requested, the superintendent, special education director, or other agency administrator shall inform the agency's board of trustees or other governing body of the request. The education agency shall immediately notify the Department's Director of Special Education of any request for a due process hearing. Within ten (10) calendar days of a written request for a regular hearing, or within five (5) business days of a written request for an expedited hearing, an impartial hearing officer shall be assigned by the Department. The Department shall maintain a list of trained hearing officers and their qualifications. (3-15-22)~~

~~d. The education agency that is a party to the hearing shall be responsible for compensating the hearing officer and paying for the cost of a verbatim transcript of the hearing. (3-15-22)~~

~~e. Due process hearings shall be conducted pursuant to IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," Individuals with Disabilities Education Act requirements, and the Idaho Special Education Manual, incorporated by reference in Section 004 of this rule. In case of any conflict between the IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General" and the IDEA, the IDEA shall supersede the IDAPA 04.11.01, and IDAPA 04.11.01 shall supersede the Idaho Special Education Manual. (3-15-22)~~

~~f. The hearing officer shall issue a written decision that includes findings of fact and conclusions of law within forty five (45) calendar days of the date a regular hearing is requested, unless a specific extension of this time line is requested by one (1) of the parties and granted by the hearing officer. The hearing officer shall issue a written decision that includes findings of fact and conclusions of law within twenty (20) calendar days of a written request for an expedited hearing, unless a specific extension of this time line has been granted. An extension of the time line for an expedited hearing shall not exceed an additional twenty five (25) calendar days, and may be granted only if requested by one (1) of the parties and agreed to by both parties. The decision shall be sent to the parent or adult student, the education agency administrator, their respective representatives, and the State Department of Education. (3-15-22)~~

~~g. The hearing officer's decision shall be binding unless either party appeals the decision by initiating a civil action. The hearing officer's decision shall be implemented not later than fourteen (14) calendar days from the date of issuance unless an appeal is filed by a parent or adult student or the decision specifies a different implementation date. An appeal to civil court must be filed within forty two (42) calendar days from the date of issuance of the hearing officer's decision. (3-15-22)~~

~~h. During the hearing the education agency shall provide reasonable accommodations as required by federal and state regulations. Disputes concerning reasonable accommodations shall be referred to the U.S. Department of Education's Americans with Disabilities Act (ADA) Committee for resolution. (3-15-22)~~

~~i. During the pendency of any due process hearing or civil appeal the child's educational placement shall be determined by the Individuals with Disabilities Education Act "stay put" requirements. (3-15-22)~~

~~j. A parent or adult student has the right to an independent educational evaluation (IEE) at public expense if the parent or adult student disagrees with an evaluation obtained by the education agency. Whenever an IEE is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria the education agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent or adult student's right to an IEE. If an education agency has cost as one (1) of the criteria the education agency uses when it initiates an evaluation, the education agency may apply that criteria to independent educational evaluations. However, the parent or adult student has the right to demonstrate that unique circumstances justify an IEE that falls outside the education agency's cost criteria,~~

~~and if so demonstrated, that IEE shall be publicly funded. A due process hearing may be initiated by the education agency to determine if the evaluation conducted by the education agency is appropriate. If the final decision of a hearing officer, or civil court, if the hearing officer's decision is appealed, is that the evaluation conducted by the education agency is appropriate, the parent or adult student still has the right to an independent educational evaluation, but not at the education agency's expense. (3-15-22)~~

~~**k.** Student records shall be managed in accordance with IDEA and Family and Educational Rights and Privacy Act regulations governing security, confidentiality, access, maintenance, destruction, inspection and amendment. (3-15-22)~~

~~**06. Assistive Technology Devices.** Education agencies may hold a parent liable for the replacement or repair of an assistive technology device that is purchased or otherwise procured by the education agency if it is lost, stolen, or damaged due to negligence or misuse at home or in another setting outside of school time. (3-15-22)~~

~~**07. Diplomas and Graduation.** School districts shall use a regular diploma for students who are eligible for special education at the completion of their secondary program. The transcript serves as a record of individual accomplishments, achievements, and courses completed. A modified or differentiated diploma or certificate may not be used for students who are eligible for special education unless the same diploma or certificate is granted to students without disabilities. If a student is not granted a regular high school diploma or if a regular high school diploma is granted for completing requirements that are not comparable to regular graduation requirements, a student who is eligible for special education is entitled to receive a free appropriate public education through the semester in which the student turns twenty-one (21) years of age or until the student completes requirements that are comparable to regular graduation requirements, whichever comes first. (3-15-22)~~

~~**08. Special Education Advisory Panel.** The State Superintendent of Public Instruction shall appoint members to serve on the Special Education Advisory Panel. Panel members shall elect annually an individual to serve a one (1) year term as vice chair followed by a one (1) year term as chair. (3-15-22)~~

109. (RESERVED)