

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 Vocational Rehabilitation:

IDAPA 47.01.01 - Rules Governing Vocational Rehabilitation Services - Proposed Rule (Docket
No. 47-0101-2401).

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 11/29/2024. 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 12/27/2024.

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: Senior Legislative Drafting Attorney - Peter Cook

DATE: November 12, 2024

SUBJECT: Vocational Rehabilitation

IDAPA 47.01.01 - Rules Governing Vocational Rehabilitation Services - Proposed Rule (Docket No. 47-0101-2401)

Summary and Stated Reasons for the Rule

The State Board of Education submits notice of proposed rule at IDAPA 47.01.01 - Rules Governing Vocational Rehabilitation Services. The State Board of Education states that during the spring and summer of 2024, the Division of Vocational Rehabilitation conducted a federal compliance review and it determined that IDAPA 47.01.01 is in need of certain revisions to ensure alignment with federal regulations. Specifically, the proposed rule removes language specifying that services must be related to a primary individual plan in Subsections 203.01.c and 203.02.c and removes Subsection 206.04, regarding employment maintenance.

Negotiated Rulemaking / Fiscal Impact

The State Board of Education states that negotiated rulemaking was not conducted because the proposed changes are do to necessary realignment to federal regulations. The State Board of Education also states that the proposed rules will not have an impact on the state general fund greater than ten thousand dollars (\$10,000).

Statutory Authority

The rulemaking appears to be authorized pursuant to section 33-2303, Idaho Code.

cc: Vocational Rehabilitation
Tracie Bent

*** PLEASE NOTE ***

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.

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
Boise, Idaho 83720-0054

Tel: 208-334-2475
legislature.idaho.gov

IDAPA 47 – DIVISION OF VOCATIONAL REHABILITATION
47.01.01 – RULES GOVERNING VOCATIONAL REHABILITATION SERVICES
DOCKET NO. 47-0101-2401
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 33-2303 and 33-6306, 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 16, 2024.

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:

During the spring and summer of 2024, the Division of Vocational Rehabilitation has been engaged in a federal compliance review. As part of this review, it was identified that IDAPA 47.01.01 is in need of minor revisions.

The proposed removal of language specifying that services must be related to a primary individual plan in subsections 203.01.c and 203.02.c and removal of Subsection 206.04, regarding employment maintenance, serve to ensure that the rule is again compliant with federal regulations. Section 33-2303, Idaho Code and the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act (WIOA). (Public Law 113-128).

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 resulting from this rulemaking: NA.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rulemaking was due to necessary realignment to federal regulations that are required regardless of negotiated rulemaking.

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@edu.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 23, 2024.

DATED this 16th day of August, 2024.

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

47.01.01 – RULES GOVERNING VOCATIONAL REHABILITATION SERVICES

203. SEVERITY OF DISABILITY.

At the time a customer is determined eligible for vocational rehabilitation services, a determination of the severity of disability, as it relates to employment, will also be determined. A priority category assignment will be determined for all eligible individuals, in one (1) of the following categories: (4-6-23)

01. Priority Category 1 - Eligible Individuals with the Most Significant Disabilities (MSD). (4-6-23)

- a. Meets criteria established for a customer with a significant disability; and (4-6-23)
- b. Experiences a severe physical and/or mental impairment that seriously limits three (3) or more functional categories (such as mobility, work skills, self-care, interpersonal skills, communication, self-direction or work tolerance) in terms of an employment outcome; and (4-6-23)
- c. Requires multiple ~~primary Individualized Plan for Employment (IPE)~~ services over an extended period of time. (4-6-23)()

02. Priority Category 2 - Eligible Individuals with Significant Disabilities (SD). (4-6-23)

- a. Meets the criteria for a customer with no significant disability; and (4-6-23)
- b. Experiences a severe physical and/or mental impairment that seriously limits one (1) or more functional categories (such as mobility, work skills, self-care, interpersonal skills, communication, self-direction or work tolerance) in terms of an employment outcome; and (4-6-23)
- c. Requires multiple ~~primary IPE~~ services over an extended period of time. (4-6-23)()

03. Priority Category 3 - All other Eligible Individuals with Disabilities (D). (4-6-23)

- a. Has a physical or mental impairment; and (4-6-23)
- b. Impairment constitutes or results in a substantial impediment to employment; and (4-6-23)
- c. Who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services. (4-6-23)

(BREAK IN CONTINUITY OF SECTIONS)

206. ORDER OF SELECTION.

01. Order of Selection. When the Division cannot provide the full range of vocational rehabilitation services to all eligible customers because of fiscal or personnel capacity constraints, the agency will enter an order of selection. The order of selection will be based on the following requirements: (4-6-23)

- a. Students with disabilities, as defined by 34 CFR 361.5(c)(51), who received pre-employment transition services prior to eligibility determination and assignment to a disability priority category will continue to receive such services. (4-6-23)
- b. All customers who have an Individualized Plan for Employment will continue to be served.

(4-6-23)

02. Priority Status. Priority will be given to eligible individuals with the most significant disabilities, followed by those with significant disabilities, and finally those eligible individuals with disabilities. All eligible customers will be assigned to one (1) of the priority categories as outlined in Section 203 of these rules. (4-6-23)

03. When Unable to Serve Eligible Individuals. If the Division cannot serve all eligible individuals within a given priority category, individuals will be released from the statewide waitlist based on disability priority category and date of application. (4-6-23)

~~**04. Employment Maintenance.** The Division will serve individuals who are in immediate jeopardy of losing their employment and who require specific services or equipment to maintain employment, regardless of severity of disability category assignment, in accordance with 34 CFR 361.36.a(3)(v). (4-6-23)~~