



Eric Milstead  
Director

# Legislative Services Office

## Idaho State Legislature

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### MEMORANDUM

**TO:** Senators THAYN, Crabtree, Ward-Engelking and,  
Representatives CLOW, Kerby, McCrostie

**FROM:** Elizabeth Bowen - Principal Legislative Drafting Attorney

**DATE:** January 11, 2021

**SUBJECT:** Temporary Rule

IDAPA 08.02.01 - Rules Governing Administration - Adoption of Temporary Rule - Docket No.  
08-0201-2101

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 Elizabeth Bowen at the Legislative Services Office at (208) 334-4845. Thank you.

Attachment: Temporary Rule

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# IDAPA 08 – STATE BOARD OF EDUCATION

## 08.02.01 – RULES GOVERNING ADMINISTRATION

### DOCKET NO. 08-0201-2101

#### NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is December 7, 2020.

**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 Article IX, Section 2, Idaho Constitution and under Sections 33-105, 33-107, 33-116, 33-1001, 33-1002, and 33-1027, Idaho Code.

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

HB 293 (2019) requires the State Board of Education to promulgate rules establishing how enrollment would be counted and reported to the state for students who attend public schools part-time or attend more than one public school at the same time. Amendments to this rule establish the methodology for reporting full-time equivalent (FTE) student enrollment as required in Section 33-1027, Idaho Code, and establishes a methodology for using average FTE student enrollment for reporting student attendance in a course and calculating average daily attendance for funding purposes. In the spring of 2020 when school districts and charter schools were forced to close buildings and move to online or hybrid instruction in response to the pandemic barriers were identified with how a day of attendance was calculated and average daily attendance was reported, particularly, when students were moving between in-person and online instruction for the same course throughout a school term as is done with hybrid instruction. Additional conflicts between the language IDAPA 08.02.01 and existing statutory language were also identified. The original language regarding days of attendance required students to be physically present, at the same time Section 33-1003C, Idaho Code and Section 33-5208, Idaho Code, allow for counting student students in attendance when receiving online instruction or through virtual programs when they are not physically present to be included in the attendance count. Because Idaho statute governs over Administrative Code this conflict has not affected funding for these programs in the past, however, this was an opportunity to align the language in Administrative Code and address students that are instructed online and in person for a single course. Additional amendments address technical changes and removing the high school equivalency certificate application requirement and for making technical corrections or cleanup to existing provisions pertaining to funding and student counts that are identified during the negotiated rulemaking process as well as the removal of outdated or obsolete sections.

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

This rule will establish a methodology for school districts and charter schools to report students that are receiving instruction regardless of the methodology of instruction (in-person or virtual). Due to the pandemic and the need for school to be able to transition between in-person and remote instruction, the current methodology only accounts of traditional in-person courses and full-time virtual programs. Additionally, HB293 (2019) established a requirement for the Board to identify a methodology for enrollment reporting. The methodology was run as a temporary rule in 2019 to establish its validity and now needs to be established through a temporary and proposed rule to maintain it through the current school year. The language has been slightly modified from the 2019 version to account for areas of improvement that were identified during the pilot run of the data in 2019.

**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: N/A

**FISCAL IMPACT STATEMENT:** The 2020 Idaho Legislature used an estimated 15,821 supports units (based on an estimated percent increase in ADA over the 293,916.40 Mid-term ADA reported in FY 20) when setting the FY 21 public schools budget. Support units calculated using preliminary FTE student enrollment data for FY 21, as of December 4, 2020, show mid-term ADA calculation coming in at approximately 304,709 (using FTE Student Enrollment). Initial numbers reported in November (pulled November 30th) showed ADA based on FTE student enrollment at 288,091.7 (using FTE Student Enrollment). Between the November 30 ISEE data pull and the December 7 ISEE data pull that number has increased by 16,617.30 ADA. The most recent fiscal impact based on calculations provided by the Department of Education as of December 29th, 2020 show us at 16,143 support units. With a variance of 322 support units from the original appropriation, the fiscal impact is projected to be around \$34,135,220, though this may change as new information becomes available.

The corrected ADA number will be used by the Department of Education to calculate support units, the support unit calculation vary based on the category a student is in. Categories are based on grade ranges and other factors such as special education. Each category of student uses a different divisor for calculating support units. Applicable state funding is then distributed to the school districts based on their support units or staff allowance calculated from support units. Over the next few weeks the Department of Education will work through the process of calculating support units and working with the school districts to identify and correct any additional discrepancies or errors in the data. Final Mid-term Support Unit numbers should be available during the first week in January.

Based on the updated numbers reported by the schools districts the Mid-term ADA of 304,709 would translate to approximately 16,095.35 support units. This number is pending adjustments to ADA reported at career technical schools. The fiscal impact will vary depending on the average support unit value and the variance between the final support units and the support units used in the FY21 appropriation. Currently we are estimated a 1.25% variance.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary rule, contact Tracie Bent at [tracie.bent@osbe.idaho.gov](mailto:tracie.bent@osbe.idaho.gov) or (208) 332-1582.

Dated this 7th day of December, 2020.

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**THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 08-0201-2101  
(Only Those Sections With Amendments Are Shown.)**

**008. DEFINITIONS.**

**01. Course.** A unit of instruction that may be determined based on the amount of instructional time or predetermined level of content and course outcomes. (12-7-20)T

**02. Virtual Course.** A course where instruction is provided in an on-line or virtual format and does not necessarily include face-to-face instruction. (12-7-20)T

**~~008~~2. -- 049. (RESERVED)**

**(BREAK IN CONTINUITY OF SECTIONS)**

**250. PUPIL ACCOUNTING AND REQUIRED INSTRUCTIONAL TIME.**  
(Section 33-512, Idaho Code)

(4-1-97)

**01. Required Instructional Time.** Excluding transportation to and from school, lunch periods, passing times, and recess, schools must schedule at least the following instructional times: kindergarten, four hundred fifty (450) hours per year or equivalent amount of instruction through an online, distance, or blended learning format; grades one through three (1-3), eight hundred ten (810) hours per year or equivalent amount of instruction through an

online, distance, or blended learning format; grades four through eight (4-8), nine hundred (900) hours per year; and grades nine through twelve (9-12), nine hundred ninety (990) hours per year or equivalent amount of instruction through an online, distance, or blended learning format. The equivalent amount of instruction shall be based on the amount of time reported for the same course or amount of coursework delivered in an in-person setting.  
(4-1-97)(12-7-20)T

**02. Required Attendance.** All pupils will complete four (4) years of satisfactory attendance in grades nine through twelve (9-12) to graduate from an accredited high school, except those who are approved for early graduation. (4-1-97)

**03. Day in Session When Counting Pupils in Attendance.** (4-1-97)

**a.** A school day for grades one through twelve (1-12) may be counted as a “day in session” when the school is open in session and students are under the guidance and direction of teachers in the teaching process for not less than four (4) hours or its equivalent of instruction per day. Lunch periods, breaks, passing time and recess will not be included in the four (4) hours. For kindergarten, each session will be at least two and one-half (2 1/2) hours per day. (4-1-97)(12-7-20)T

**b.** Half-day Session. A half-day in session occurs when the students in grades one through twelve (1-12) are under the guidance and direction of teachers in the teaching process for a minimum of two and one-half (2 1/2) hours or its equivalent of instruction or the teachers are involved in staff development activities for not less than two and one-half (2 1/2) hours. Students attending less than a half-day in session may have their hours aggregated by week for reporting purposes. (4-1-97)(12-7-20)T

**c.** Teacher In-service Activities. For grades one through twelve (1-12), not more than twenty-two (22) hours may be utilized for teacher in-service activities, based on the district approved calendar. In the event a school district chooses to utilize full days instead of half-days, the attendance reported for these full days will be the average of the attendance for the other days of that same week. (4-1-97)

**04. Day of Attendance - Kindergarten.** A day of attendance for a kindergarten pupil is one in which a pupil is physically present for a period of two and one-half (2 1/2) hours under the direction and guidance of a teacher while school is in session or under homebound instruction. A homebound student is one who is unable to attend school for at least ten (10) consecutive days due to illness, accident, or an unusual disabling condition. Attendance will be reported in half-day increments. Attendance reports for any day in the school year will reflect only those students physically present. Particularly, enrollment figures are not to be used for the beginning nor closing weeks of school. (Section 33-1001(5), Idaho Code.) (4-1-97)(12-7-20)T

**05. Day of Attendance (ADA) - Grades One Through Twelve (1-12).** A day of attendance is one in which a pupil is physically present for the full day under the guidance and direction of a teacher or other authorized school district personnel while school is in session or is a homebound student under the instruction of a teacher employed by the district in which the pupil resides, with the exception as stated in “day in session” above. A homebound student is one who is unable to attend school for at least ten (10) consecutive days due to illness, accident or an unusual disabling condition. Attendance will be reported in full or half-days. Attendance reports for any day in the school year will reflect only those students physically present or under homebound instruction. (Section 33-1001(4), Idaho Code) (4-1-97)(12-7-20)T

**06. Average Daily Attendance.** Average daily attendance will be reported by averaging the full-time equivalent enrollment by week for students receiving instruction. To be considered as a student receiving instruction the student must have regular contact with the applicable instructional or pupil service staff member and be completing assignments as applicable to the grade range and course the student is enrolled in. For funding purposes full-time equivalent enrollment in an alternative summer school program shall be based on the student attending two hundred twenty-five (225) hours or more or the proportional share of hours up to one (1) average day of attendance. In a given school year, the average daily attendance for a given school is the aggregate scheduled days of attendance divided by the number of days school was actually in session. (Section 33-1001(2), Idaho Code) (4-1-97)(12-7-20)T

**07. Full-Time Equivalent (FTE) Enrollment Reporting.** (12-7-20)T

a. Kindergarten students enrolled in one (1) LEA for a total number of courses that equal six hundred (600) or more minutes per week shall equal zero point five (0.5) FTE. Grade one (1) through grade twelve (12) students enrolled in one (1) LEA for a total number of courses that equal one thousand two hundred (1,200) or more minutes per week shall equal one (1) FTE. (12-7-20)T

b. Kindergarten students enrolled in one (1) or more LEAs for a total number of courses at all LEAs that equal six hundred (600) minutes per week or less, the FTE shall be based on the percentage of time each student's courses are of six hundred (600) minutes. Grade one (1) through grade twelve (12) students enrolled in one (1) or more LEAs for a total number of courses at all LEAs that equal one thousand two hundred (1,200) minutes per week or less, the FTE shall be based on the percentage of time each student's courses are of one thousand two hundred (1,200) minutes. (12-7-20)T

c. Kindergarten students enrolled in more than one (1) LEA for a total number of courses at all LEAs that equal six hundred (600) or more minutes per week and less than or equal to seven hundred fifty (750) minutes the FTE shall be fractionalized based on percentage of time for which the student is enrolled. Grade one (1) through grade twelve (12) students enrolled in more than one (1) LEA for a total number of courses at all LEAs that equal one thousand two hundred (1,200) or more minutes per week and less than or equal to the respective amounts in the following subsections the FTE shall be fractionalized based on percentage of time for which the student is enrolled: (12-7-20)T

i. Kindergarten: seven hundred fifty (750) minutes. (12-7-20)T

ii. Grade one (1) through grade three (3): one thousand three hundred fifty (1,350) minutes. (12-7-20)T

iii. Grade four (4) through grade eight (8): one thousand five hundred (1,500) minutes. (12-7-20)T

iv. Grade nine (9) through grade twelve (12): one thousand six hundred fifty (1,650) minutes. (12-7-20)T

d. Students enrolled in more than one (1) LEA for a total number of courses at all LEAs that equal more than the following minutes the FTE shall be based on the percentage of time for which the student is enrolled: (12-7-20)T

i. Grade one (1) through grade three (3): one thousand three hundred fifty (1,350) minutes. (12-7-20)T

ii. Grade four (4) through grade eight (8): one thousand five hundred (1,500) minutes. (12-7-20)T

iii. Grade nine (9) through grade twelve (12): one thousand six hundred fifty (1,650) minutes. (12-7-20)T

e. Courses in LEAs with block scheduling that results in students attending courses for a period greater than one (1) week in order to encompass all courses the student is enrolled in for the term will use average minutes per week over the applicable time period to determine the courses minutes per week. (12-7-20)T

f. Students enrolled in an alternative summer school or alternative night school program of two hundred twenty-five (225) or more hours of instruction may be counted as an additional zero point two five (.25) FTE. Alternative summer school enrollment will be included in the October 1 reporting period. (12-7-20)T

g. Students enrolled in an alternative summer school or night school program of less than two hundred twenty-five (225) hours FTE will be determined based on the proportional share of two hundred twenty-five (225) hours the program consists of. (12-7-20)T

h. Students enrolled in more than one (1) LEA in grade seven (7) through grade twelve (12) shall count enrollment at all LEAs for determining eligibility of overload courses identified in Sections 33-4601 and 33-4602, Idaho Code. (12-7-20)T