

Dear Senators THAYN, Lent, Ward-Engelking, and
Representatives CLOW, Kerby, McCrostie:

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

IDAPA 08.02.04 - Rules Governing Public Charter Schools (ZBR Chapter Rewrite) - Proposed
Rule (Docket No. 08-0204-2201);

IDAPA 08.03.01 - Rules of the Public Charter School Commission (ZBR Chapter Rewrite) -
Proposed Rule (Docket No. 08-0301-2201).

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 11/25/2022. 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 12/23/2022.

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: November 01, 2022
SUBJECT: State Board of and State Department of Education

IDAPA 08.02.04 - Rules Governing Public Charter Schools (ZBR Chapter Rewrite) - Proposed Rule
(Docket No. 08-0204-2201)

IDAPA 08.03.01 - Rules of the Public Charter School Commission (ZBR Chapter Rewrite) - Proposed Rule
(Docket No. 08-0301-2201)

IDAPA 08.02.04 - Rules Governing Public Charter Schools (ZBR Chapter Rewrite) - Proposed Rule
(Docket No. 08-0204-2201)

Summary and Stated Reasons for the Rule

The State Board of and State Department of Education submits notice of proposed rulemaking relating to the governance of public charter schools. The proposed amendments to rule 8.02.04 removes provisions to simply regulations and remove requirements that are duplicative of provisions in chapter 52, title 33, Idaho Code. In addition, amendments include provisions identified in IDAPA 08.03.01 regarding the charter school petition process that were not included in IDAPA 08.02.04 are now included in IDAPA 08.02.04 and IDAPA 08.03.01 are proposed to be repealed under Docket 08-0301-2201.

Negotiated Rulemaking / Fiscal Impact

The agency states that negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 2022 Idaho Administrative Bulletin, Volume 22-7, page 91. No fiscal impact to the General Fund exceeding \$10,000 is expected.

Statutory Authority

The proposed rule appears to be within the agency's statutory authority pursuant to Section 33-105 and chapter 52, title 33, Idaho Code.

Paul Headlee, Deputy Director Legislative Services Office	Kristin Ford, Manager Research & Legislation	Keith Bybee, Manager Budget & Policy Analysis	April Renfro, Manager Legislative Audits	Glenn Harris, Manager Information Technology
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Statehouse, P.O. Box 83720
Boise, Idaho 83720-0054

Tel: 208-334-2475
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IDAPA 08.03.01 - Rules of the Public Charter School Commission (ZBR Chapter Rewrite) - Proposed Rule (Docket No. 08-0301-2201)

Summary and Stated Reasons for the Rule

The State Board of and State Department of Education submits notice of proposed rulemaking relating to the rules of the public charter school commission. This proposal would repeal IDAPA 08.03.01 and move relevant provisions that are not duplicative of IDAPA 08.02.04 are being moved to IDAPA 08.02.04.

Negotiated Rulemaking / Fiscal Impact

The agency states that negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 2022 Idaho Administrative Bulletin, Volume 22-7, page 92. No fiscal impact to the General Fund exceeding \$10,000 is expected.

Statutory Authority

The proposed rule appears to be within the agency's statutory authority pursuant to Section 33-105 and chapter 52, title 33, Idaho Code.

cc: State Board of and State Department of Education
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.

IDAPA 08 – STATE BOARD OF EDUCATION
08.02.04 – RULES GOVERNING PUBLIC CHARTER SCHOOLS
DOCKET NO. 08-0204-2201 (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 Sections 33-105, and chapter 52, 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 19, 2022.

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 is the result of a review of the chapter for evaluation on how it can be improved, simplified, and streamlined. Amendments include the removal of unnecessary provision to streamline and simply the regulations and remove requirements that are duplicative of provisions established in chapter 52, title 33, Idaho code. Additionally, provisions identified in IDAPA 08.03.01 regarding the charter school petition process that were not previously included in IDAPA 08.02.04 have been added to IDAPA 08.02.04 and IDAPA 08.03.01 are proposed to be repealed under Docket 08-0301-2201.

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: 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 July 2022 Idaho Administrative Bulletin, [Volume 22-7, page 91](#).

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 Tracie Bent at (208)332-1582 or tracie.bent@osbe.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 October 26, 2022.

DATED this 2nd day of September, 2022.

Tracie Bent
Chief Planning and Policy Officer
State Board of Education
650 W State St.
PO Box 83720
Boise, Idaho 83720-0037
Phone: (208)332-1582
fax: (208)334-2632

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0204-2201
(Zero Based Regulation (ZBR) Chapter Rewrite)

08.02.04 – RULES GOVERNING PUBLIC CHARTER SCHOOLS

000. LEGAL AUTHORITY.

In accordance with Sections 33-105, 33-5203, and 33-5210(4)(e), Idaho Code, the Board is authorized to promulgate rules implementing the provisions of Title 33, Chapter 52, Idaho Code. ()

001. SCOPE.

These rules establish a consistent application and review process for the approval and maintenance of public charter schools in Idaho. ()

002. (RESERVED)

003. ADMINISTRATIVE APPEALS.

The provisions found in Sections 400 through 404, of these rules, govern administrative appeals of public charter schools. ()

004. -- 009. (RESERVED)

010. DEFINITIONS.

01. Authorizer Fee. Fee paid by each public charter school to its authorized chartering entity. ()

02. Board. Means the Idaho State Board of Education. ()

03. Charter Holder. Means the governing board of the non-profit corporation to which a charter has been granted by an authorized chartering entity, as defined in Section 33-5202A(a), Idaho Code. ()

04. Commission. Means the Idaho Public Charter School Commission, as provided by Section 33-5213, Idaho Code. ()

05. Department. Means the Idaho Department of Education. ()

06. District. Means an Idaho public school district. ()

07. Institution. Means an Idaho public college, university or community college, or a private, nonprofit Idaho-based, nonsectarian college or university that is accredited by the same organization that accredits Idaho public colleges and universities. ()

08. Petitioners. Means the group of persons who submit a petition to establish a new public charter school, or to convert an existing traditional public school to a public charter school, as provided by Section 33-5205, Idaho Code, and the procedures described in Sections 200 through 205 of these rules. ()

09. School Year. Means the period beginning on July 1 and ending the next succeeding June 30 of each year. ()

011. -- 099. (RESERVED)

100. LIMITATIONS ON NEW PUBLIC CHARTER SCHOOLS.

01. Responsibilities of Petitioners on Approval of Charter. Upon the approval of a new public charter school by an authorized chartering entity, the petitioners shall provide the Board with written notice of such approval. The authorized chartering entity of the public charter school shall provide the Board with copies of the charter and any charter revisions upon request. ()

02. Authorization to Begin Educational Instruction. The public charter schools authorized to begin educational instruction during a given school year shall be those public charter schools that have received approval from their authorized chartering entities to begin educational instruction during such school year. A public charter school that is approved by an authorized chartering entity, but which does not begin educational instruction must confirm with the Board, on or before June 1 preceding the next succeeding school year, that it is able to begin educational instruction during such school year. ()

101. AUTHORIZED CHARTERING ENTITY.

01. Governing Board. An institution or district shall receive approval from their governing board prior to accepting petitions or authorizing any charter schools. ()

a. Notwithstanding Sections 400 through 404, of these rules, denial of a new petition by an institution is final. A petitioner may submit a petition that has been denied by an institution to any other authorized chartering entity. ()

102. AUTHORIZER FEE.

01. Notification. It is the responsibility of each authorizer to notify the Department if the authorizer fee has not been received by the date specified in Section 33-5208, Idaho Code. ()

a. The authorizer must provide notification of the delinquent fee to the charter school prior to reporting to the Department. ()

b. The authorizer must provide the amount delinquent and proof of notification to the charter school within thirty (30) days of the non-payment of the authorizer fee. ()

c. The Department shall withhold the amount of the delinquent fee from the next scheduled release of funds to the charter school. The funds will be withheld until the Department has received notification from the authorizer that the authorizer fee has been paid in full. ()

103. -- 199. (RESERVED)

200. PROCEDURE FOR FORMATION OF A NEW PUBLIC CHARTER SCHOOL.

01. Public Charter School Workshops. The purpose of the public charter school workshops shall be to provide public charter school petitioners with a brief overview of a variety of educational and operational issues relating to public charter schools, as well as to answer questions and to provide technical assistance, as may be necessary, to aid petitioners in the preparation of public charter school petitions. ()

02. Petition Submittal. A public charter school petition may be submitted to only one (1) authorized chartering entity at a time. A petitioner may submit a petition that has been denied by an authorized chartering entity to any other authorized chartering entity after an appeal process, if any, is complete and a final decision has been reached. ()

201. POLICIES AND PROCEDURES ADOPTED BY AN AUTHORIZED CHARTERING ENTITY.

An authorized chartering entity must adopt policies and procedures describing the charter school petition process and the procedures that petitioners must comply with in order to form a new public charter school, including a public virtual school. Petitioners must comply with the policies and procedures adopted by the authorized chartering entity with which a petition is submitted. Such charter school policies and procedures must comply with Title 33, Chapter 52, Idaho Code, and the rules promulgated by the Board. If there is any conflict between the charter school policies and procedures adopted by an authorized chartering entity and rules promulgated by the Board, then the Board rules shall govern. ()

202. NEW PUBLIC CHARTER SCHOOL APPLICATION REQUIREMENTS.

Petitioners seeking to establish a new public charter school must apply to an authorized chartering entity through the

submittal of a petition consisting of all of the following elements: ()

01. Introduction. Briefly introduce the proposed public charter school by providing the following: ()

a. Cover page with the proposed school’s name, intended opening year, general location, and the contact information for one (1) petitioner who will serve as liaison with the authorizer during the petition process; ()

b. Table of contents; ()

c. One-page (1) executive summary describing the proposed school’s organizational structure, educational program, and student outcome expectations; and ()

d. Mission statement. ()

02. Educational Program. Describe the proposed school’s educational program by explaining the following: ()

a. Educational philosophy; ()

b. Student academic achievement standards and any additional goals and methods for measuring achievement; ()

c. Key educational design elements, including curricula, tools and instructional methods identified to carry out the educational philosophy and meet the stated academic achievement standards and goals, which may include evidence demonstrating efficacy of these elements; and ()

d. Strategies for meeting the needs of specific student populations, including, but not limited to, students identified as at-risk, students who qualify for special education or gifted and talented services, or students identified as English language learners. ()

03. Financial and Facilities Plan. Demonstrate a sound understanding of public charter school finances and facilities needs. ()

a. State whether the school intends to provide transportation or food service, and provide plans for provision of these services if they will be offered; ()

b. Describe how the school’s finances will be managed and monitored; ()

c. Provide a working draft of the school’s prospective facilities plan, including likely facilities needs and estimated costs; ()

d. Provide a description of any potential facilities that have been identified and a timeline and process for securing appropriate space; and ()

e. Attach the following to Appendix A: Pre-opening budget and three-year operating budget, including detailed assumptions for all revenue and expenditures for each year; year one (1), break-even budget demonstrating the minimum enrollment needed to achieve a zero (0) or marginal net income balance at the end of the year; cash flow projection for the first operational year, demonstrating an understanding of charter school monetary flow; evidence of existing and anticipated funds; and evidence that projected facilities costs are reasonable within the start-up and three-year budgets. ()

04. Board Capacity and Governance Structure. Provide information about the legal entity and the individuals involved in opening the proposed school. ()

a. Attach copies of the nonprofit corporation’s Articles of Incorporation and Corporate Bylaws to

Appendix B, though note that they will not be incorporated as part of the school’s charter; ()

b. Provide a description of the governance structure; ()

c. List any already identified members of the board of directors, attach their professional resumes to Appendix C, and provide any additional information about their qualifications; ()

d. Describe the board’s plan for a smooth transition from initial founding members to subsequent members; and ()

e. Describe the plan for board member recruitment and training. ()

05. Student Demand and Primary Attendance Area. Demonstrate the need and community demand for the proposed public charter school in the selected location. ()

a. Describe the primary attendance area and list the public school districts that overlap this area; ()

b. Clearly articulate the need and demand for a school in the selected location, including demographics for the intended neighborhood. Need is the reason(s) existing schools are insufficient or inadequate and includes state performance data. Demand is evidence of desire from prospective families to attend the school; ()

c. Describe the population of students the proposed school intends to serve and how the selected location supports serving such students; ()

d. Provide the target enrollment by grade level and projected growth over the first three (3) years of operations and maximum student enrollment capacity if the petitioners do not anticipate reaching capacity by year three (3); ()

e. Describe any community partnerships or other local support for the proposed school; and ()

f. Describe strategies for informing under-served students and their families about the prospective school and the enrollment process. ()

06. School Leadership and Management. Describe the proposed school’s administrative leadership structure, and provide information about any potential education service providers. ()

a. Attach an organizational chart to Appendix D illustrating the proposed school’s leadership structure and indicating the reporting structures of school leaders to the board. If school leaders have already been identified, include their names, contact information, resumes, and any additional information about their qualifications in the appendices. ()

b. Describe the responsibilities of and relationships among school leadership, the governing board, instructional leaders, and staff, and include a plan for evaluating school leaders. ()

c. If the proposed school intends to work with an educational service provider, provide the name of the company, a contact within the company, and specify in detail the extent of the entity’s participation in the management and operation of the school. Attach the following to Appendix E: ()

i. A term sheet indicating the fees to be paid by the proposed school to the management company, the length of the proposed contract, the terms for the contracts renewal, and provisions for termination; ()

ii. Copies of the two (2) most recent contracts that the entity has executed with operating charter schools; and ()

iii. A detailed description of the education service provider’s relationship to the school’s board of directors; ()

iv. A detailed description of how and why the management organization or educational service provider was selected, and evidence that the organization provides high-quality service to similarly situated schools, if applicable. ()

07. Supporting Documents. ()

a. Appendix A – Budgets, cash flow, additional funds. ()

b. Appendix B – Articles of Incorporation and Bylaws. ()

c. Appendix C – Board of Directors. ()

d. Appendix D – School Administration. ()

e. Appendix E – Education Service Provider. ()

f. Appendix F – Optional additional supporting documents. ()

203. ADMISSION PROCEDURES.

01. Model Admission Procedures. Admission to a public charter school shall be determined by an equitable selection process. The commission shall make available to all public charter schools a model procedure. The equitable selection process must be held within seven (7) days of the enrollment deadlines as defined in Subsection 203.02 and must take place in a public setting, the date and time of which must be noticed to the public at least 48 hours in advance. ()

02. Enrollment Deadline. A charter holder shall establish an enrollment deadline for each school year and may establish an enrollment capacity below that stated in the public charter school’s performance certificate. The deadline shall be established either by annual vote of the charter holder’s board of directors or by establishment of charter holder policy. The enrollment deadline shall be the date by which all written requests for admission to attend the public charter school for the next school year must be received. Neither the enrollment deadline nor a lowered enrollment capacity may be changed once the enrollment information is disseminated as required by Subsection 203.03. ()

03. Enrollment Opportunities. A charter holder shall ensure that citizens in the primary attendance area, as it is defined in the school’s performance certificate, are made aware of the enrollment opportunities of the public charter school. ()

a. The notice must include the enrollment deadline, the public charter school’s total enrollment capacity for the next school year, and an advisory that all prospective students will be given the opportunity to enroll in the public charter school, regardless of race, color, national origin, ethnicity, religion, gender, socioeconomic status, or special needs; ()

b. One (1) or more notices must be publicly disseminated within the primary attendance area by an independent third party. Notices include, but are not limited to, printed publications, technology and social media broadcasts, or signage displayed by community partners outside of the school’s physical location. ()

04. Requests for Admission. A parent, guardian, or other person with legal authority to make decisions regarding school attendance on behalf of a child residing in this state, must make a request in writing in electronic or hard-copy format for such child to attend a public charter school. ()

a. The written request for admission shall contain the name and contact information of a legal guardian of the prospective student; the name of the student, the last grade level completed, and address of the prospective student if different from the legal guardian. Requests must indicate whether the prospective student is a sibling of a currently enrolled student. The request for admission may only request that information that is necessary for determining the students eligibility for admittance as approved in the charter school performance certificate.

()

b. In the case of a family with more than one (1) child seeking to attend a public charter school, a single written request for admission must be submitted on behalf of all siblings. The written request for admission must be submitted to, and received by, the public charter school on or before the established enrollment deadline. The written request for admission shall contain the name, grade level, address, and telephone number of each prospective student in a family. If the initial capacity of the public charter school is insufficient to enroll all prospective students, then an equitable selection process, such as a lottery or other random method, shall be utilized to determine which prospective students will be admitted to the public charter school, as described in Subsection 203.09 of this rule. Only those written requests for admission submitted on behalf of prospective students that are received prior to the enrollment deadline established by the public charter school shall be permitted in the equitable selection process. Only written requests for admission shall be considered by the public charter school. Written requests for admission received after the established enrollment deadline will be added to the bottom of the waiting list for the appropriate grade. If there is an opening in one grade, a sibling, if any, from a late submitted application must go to the bottom of the sibling list. ()

c. Where a weighted lottery has been approved through the charter school's performance certificate and in compliance with the admission preference requirements established in Section 33-5206, Idaho Code, the charter school may request such data as is necessary to apply the provisions of the weighted lottery. ()

05. Final Selection List. The names of the persons in highest order on the final selection list shall have the highest priority for admission to the public charter school in that grade, and shall be offered admission to the public charter school in such grade until all seats for that grade are filled. A waitlist of prospective students shall be compiled each year after the equitable selection process has been completed. The waitlist shall consist of students for whom no open seat is currently available and shall prioritize first, prospective students for whom a request for admission was received before the enrollment deadline in the order in which the students were selected during the equitable selection process, and second, prospective students for whom a written request for admission was received after the enrollment deadline in the order in which the request was received. ()

06. Notification and Acceptance Process. With respect to students selected for admission to the public charter school, within seven (7) days after conducting the equitable selection process, the public charter school shall send an offer letter to the legal guardian who submitted a written request for admission on behalf of a student, advising such person that the student has been selected for admission to the public charter school. The offer letter must be signed by such student's parent, or guardian, and returned to the public charter school by the date designated in such offer letter by the public charter school. ()

a. With respect to a prospective student not eligible for admission to the public charter school, within seven (7) days after conducting the selection process, the public charter school shall send a letter to the legal guardian who submitted a request for admission on behalf of such student, advising such person that the prospective student is not eligible for admission, but will be placed on a waiting list and may be eligible for admission at a later date if a seat becomes available. ()

b. If a legal guardian receives an offer letter on behalf of a student and declines admission, or fails to timely sign and return such offer by the date designated in such offer letter by the public charter school, then the name of such student will be stricken from the final selection list, and the seat that opens in that grade will be made available to the next eligible student on the final selection list. ()

c. If a student withdraws from the public charter school during the school year for any reason, then the seat that opens in that grade will be made available to the next eligible student on the final selection list. ()

07. Subsequent School Years. The final selection list for a given school year shall not roll over to the next subsequent school year. The legal guardian of a student who remains on the waitlist when the next enrollment deadline is noticed to the public must be notified that a new written request for admission must be completed prior to the new enrollment deadline in order for the student to be added to the prospective student list. If the capacity of the public charter school is insufficient to enroll all prospective students during the next subsequent school year, then a new equitable selection process shall be conducted by the public charter school for such school year. ()

204. (RESERVED)

205. NEW CHARTER SCHOOL PETITIONS.

01. Approval of a New Charter School Petition. ()

a. If a petition is approved, then the authorized chartering entity and the petitioners must execute a performance certificate within seventy-five (75) days of the approval. ()

b. The authorized chartering entity shall provide the Board with written notice of approval of a new public charter school. The authorized chartering entity of the public charter school shall provide the Board with copies of the charter and any charter revisions upon request. ()

02. Denial of a New Charter School Petition. ()

a. If a petition is denied, then the authorized chartering entity must promptly prepare for petitioners a written notice of its decision to deny the charter. The written decision shall include all of the reasons for the denial, and shall also include a reasoned statement that states or explaining the criteria and standards considered relevant by the authorized chartering entity, the relevant contested facts relied upon, and the rationale for the decision based on the applicable statutory provisions and factual information presented to the authorized chartering entity. ()

b. Only petitions submitted to a local board of trustees of a school district or the public charter school commission may be appealed. The petitioners may appeal the decision of the authorized chartering entity, in accordance with the procedures described in Sections 401 through 402 of these rules. ()

206. -- 299. (RESERVED)

300. CHARTER HOLDER RESPONSIBILITIES.

01. General. The charter holder of a public charter school shall be responsible for ensuring that the public charter school is adequately staffed, and that such staff provides sufficient oversight over all operational and educational activities. In addition, the governing board shall be responsible for ensuring that the school complies with all applicable federal and state education standards, as well as all applicable state and federal laws, rules and regulations, and policies. ()

02. Compliance with Terms of Performance Certificate. The governing board of a public charter school shall be responsible for ensuring that the school is in compliance with the terms and conditions of the performance certificate approved executed in accordance with Section 33-5205B(1), Idaho Code. Intentional failure to operate a charter school within the terms and conditions of the executed performance certificate are grounds to initiate a review by the authorized chartering entity and may result in the addition of stipulations on the performance certificate or revocation of the charter. ()

03. Annual Reports. An authorized chartering entity may request that a public charter school provide additional information to ensure that the public charter school is meeting the terms of its performance certificate. ()

04. Operational Issues. The charter holder shall be responsible for promptly notifying its authorized chartering entity if it becomes aware that the school is not operating in compliance with the terms and conditions of its performance certificate. Thereafter, the charter holder shall also be responsible for advising its authorized chartering entity with follow-up information as to when, and how, such operational issues are finally resolved and corrected. ()

05. Articles of Incorporation and Bylaws. The charter holder shall be responsible for promptly notifying its authorized chartering entity of any revisions or amendments to the articles of incorporation or bylaws. ()

06. Required Documentation. Public charter schools shall ensure that the following documentation is

up to date and on file with the school's authorized chartering entity: a copy of the lease agreement for leased building(s) at which students will be taught; a copy of any notice from the school's accrediting body that the school has failed to meet or maintain full accreditation requirements; copies of any complaints filed against the school including, but not limited to, lawsuits and complaints filed with the Idaho professional standards commission relating to school employees; a current list of all school board members, including full name, address, telephone number, and resume must be on file with the Commission within five (5) business days of any changes; and any additional proof of compliance as reasonably requested by the authorizer. ()

301. AUTHORIZED CHARTERING ENTITY RESPONSIBILITIES.

01. Monitoring. Notwithstanding Section 300 of these rules, the authorized chartering entity of a public charter school shall be responsible for monitoring the public charter school's operations in accordance with all of the terms and conditions of the performance certificate, including compliance with all applicable federal and state education standards and all applicable state and federal laws, regulations, and policies. ()

02. Pre-opening Site Visit. Authorized chartering entities may conduct site visits to the physical location of the public charter school to verify the facility meets all state, local, and federal requirements for operating a public school. ()

03. Performance Certificate Review. Pursuant to Section 33-5209B, Idaho Code, an authorized chartering entity may renew a charter for a term of five (5) years or may nonrenew a charter following the initial operating term. Should an authorized chartering entity take no action to renew or nonrenew the charter, and the charter school has met all of the existing performance certificate targets, the charter school shall be provisionally renewed until such time as the chartering entity takes action. The five-year term of the renewed charter shall be based on the provisional renewal date. ()

302. CHARTER REVISIONS.

01. Request for Revision of Charter or Performance Certificate. The governing board of a public charter school that desires to revise its charter or performances certificate must submit a written request and the proposed revisions to the public charter school's authorized chartering entity. ()

02. Procedure for Reviewing Request for Charter or Performance Certificate Revision. The authorized chartering entity shall have seventy-five (75) days from the date of receipt of the written request and proposed revisions in which to issue its decision on the request for charter or performance certificate revision. The authorized chartering entity shall consider the request for charter or performance certificate revision at its next regular meeting following the date of receipt of the written request and proposed revisions, provided that the request and proposed revisions are submitted no fewer than thirty (30) days in advance of that meeting. If permitted by applicable policies and procedures adopted by the authorized chartering entity, the review of a request for a charter or performance certificate revision may be delegated to appropriate staff employed by the authorized chartering entity. An authorized chartering entity may, but is not required to, conduct a public hearing to consider the request for charter or performance certificate revision. ()

03. Approval of Proposed Charter or Performance Certificate Revision. If the authorized chartering entity approves the proposed charter or performance certificate revision, a copy of such revision shall be executed by each of the parties to the charter or performance certificate and shall be treated as either a supplement to, or amendment of, the final approved charter or performance certificate, whatever the case may be. ()

04. Denial of Proposed Charter or Performance Certificate Revision. If the proposed charter or performance certificate revision is denied, then the authorized chartering entity must prepare a written notice of its decision which shall contain all of the reasons for the decision. The public charter school may appeal the decision to the Board. The provisions of Section 403 shall govern the appeal. ()

303. REVOCATION.

An authorized chartering entity may revoke a charter in accordance with the procedure described in this Section if a public charter school has failed to meet any of the specific, written conditions for necessary improvements established pursuant to the provisions of Section 33-5209B(1), Idaho Code, by the dates specified. ()

01. Written Notice of Intention to Revoke Charter. The authorized chartering entity must provide the public charter school with reasonable written notice of the intent to revoke the charter, which must include all of the reasons for such proposed action. In addition, such notice shall provide the public charter school with a reasonable opportunity to reply, which shall not be less than thirty (30) days after the date of such notice. ()

02. Public Hearing. The authorized chartering entity shall conduct a public hearing with respect to its intent to revoke a charter. Such hearing shall be held no later than thirty (30) days after receipt of such written reply. If the public charter school does not reply by the date set in the notice, then such hearing shall be held no later than sixty (60) days after the date the notice was sent by the authorized chartering entity. ()

a. Written notification of the hearing shall be sent to the public charter school at least ten (10) days in advance of the hearing. ()

b. The public hearing shall be conducted by the authorized chartering entity, or such other person or persons appointed by the authorized chartering entity to conduct public hearings and receive evidence as a contested case in accordance with Section 67-5242, Idaho Code. ()

03. Charter Revocation. If the authorized chartering entity determines that the public charter school has failed to meet any of the specific written conditions for necessary improvements established pursuant to the provisions of Section 33-5209B(1), Idaho Code, by the dates specified, then the authorized chartering entity may revoke the charter. Such decision may be appealed to the Board. The provisions of Section 403 of these rules shall govern the appeal. ()

304. -- 400. (RESERVED)

401. APPEAL TO THE DEPARTMENT OF A DECISION RELATING TO THE FORMATION OF A NEW PUBLIC CHARTER SCHOOL OR CONVERSION OF A PUBLIC SCHOOL.
The following procedures govern appeals pursuant to Section 33-5207(1), Idaho Code. ()

01. Submission of Appeal. To institute an appeal, the petitioners/appellants shall submit a notice of appeal and request for public hearing in writing to the Department that describes, in detail, all of the grounds for the appeal, and the remedy requested, within thirty (30) days from the date of the written decision of the authorized chartering entity that reviewed the petition. A copy of the notice of appeal shall be submitted to the authorized chartering entity, and with the Board. In addition, contemporaneous with the submission of the notice of appeal, the petitioners/appellants shall also submit to the Department copies of the complete record of all actions taken with respect to the consideration of the public charter school petition. The record must be in chronological order and must be appropriately tabbed and indexed. The record must contain, at a minimum, all of the following documents: ()

a. The name, address, and telephone number of the person or persons submitting the appeal on behalf of petitioners/appellants, as well as the authorized chartering entity that issued the decision being appealed. ()

b. The complete petition that was submitted to the authorized chartering entity, including any amendments thereto or supplements thereof. ()

c. Copies of audio or video recordings, if any, and the minutes from all meeting(s) where the petition was considered or discussed. ()

d. All correspondence between the petitioners/appellants and the authorized chartering entity relating to the petition from the date the original petition was submitted until the date the authorized chartering entity issued the decision being appealed. ()

e. The written decision provided by the authorized chartering entity to the petitioner. A copy of such notice of appeal shall be submitted to the authorized chartering entity whose decision is being appealed, and to the Board. ()

02. Hearing Officer. The Department shall hire a hearing officer to review the action of the authorized chartering entity and to conduct a public hearing, pursuant to Section 67-5242, Idaho Code. The Department shall forward to the hearing officer one (1) copy of the record provided by petitioners/appellants and attached to the notice of appeal within ten (10) business days of receipt. ()

03. Public Hearing. A public hearing to review the decision of the authorized chartering entity shall be conducted within thirty (30) days after the hearing officer receives the notice of appeal and request for a public hearing submitted to the Department. ()

04. Notice of Hearing. All parties in an appeal shall be notified of a public hearing at least ten (10) days in advance, or within such time period as may be mandated by law. The notice shall identify the time, place, and nature of the hearing; a statement of the legal authority under which the hearing is to be held; the particular sections of the statutes and any rules involved; the issues involved; and the right to be represented. The notice shall identify how and when documents for the hearing will be provided to all parties. ()

05. Prehearing Conference. The hearing officer may, upon written or other sufficient notice to all interested parties, hold a prehearing conference to formulate or simplify the issues; obtain admissions or stipulations of fact and documents; identify whether there is any additional information that had not been presented to the authorized chartering entity; arrange for exchange of any proposed exhibits or prepared expert testimony; limit the number of witnesses; determine the procedure at the hearing; and to determine any other matters which may expedite the orderly conduct and disposition of the proceeding. ()

06. Hearing Record. The hearing shall be recorded unless a party requests a stenographic recording by a certified court reporter, in writing, at least seven (7) days prior to the date of the hearing. Any party requesting a stenographic recording by a certified court reporter shall be responsible for the costs of same. Any party may request that a transcript of the recorded hearing be prepared, at the expense of the party requesting such transcript, and prepayment or guarantee of payment may be required. Once a transcript is requested, any party may obtain a copy at the party's own expense. ()

07. Hearing Officer's Recommendation. The hearing officer shall issue a recommendation within ten (10) days after the date of the hearing. The recommendation shall include specific findings on all major facts at issue; a reasoned statement in support of the recommendation; all other findings and recommendations of the hearing officer; and a recommendation affirming or reversing the decision of the authorized chartering entity. The hearing officer shall mail or deliver a copy of the recommendation to the Department, the petitioners/appellants, and the authorized chartering entity. ()

08. Review of Recommendation by Authorized Chartering Entity. ()

a. The authorized chartering entity shall hold a public hearing to review the recommendation of the hearing officer within thirty (30) days of receipt of the recommendation. ()

b. Written notification of the scheduled public hearing shall be sent by the authorized chartering entity to the petitioners/appellants at least ten (10) days prior to the scheduled hearing date. ()

c. The authorized chartering entity shall make a final decision to affirm or reverse its initial decision within ten (10) days after the date the public hearing is conducted. ()

09. Reversal of Initial Decision. ()

a. If the authorized chartering entity reverses its initial decision and denies the conversion of a traditional public school to a public charter school, then that decision is final and there shall be no further appeal. ()

b. If the authorized chartering entity reverses its initial decision and approves the new public charter school, then the charter shall be granted and there shall be no further appeal. ()

10. Affirmation of Initial Decision. ()

a. If the authorized chartering entity affirms its initial decision to authorize the conversion of a traditional public school to a public charter school, then the charter shall be granted and there shall be no further appeal. ()

b. If the authorized chartering entity affirms its initial decision and denies the grant of a new public charter school, then the petitioners/appellants may appeal such final decision further to the Board in accordance with the procedure described in Section 402 of these rules. ()

402. APPEAL TO THE BOARD RELATING TO THE DENIAL OF A REQUEST TO FORM A NEW PUBLIC CHARTER SCHOOL.

01. Submission of Appeal. The petitioners/appellants shall submit a notice of appeal in writing with the Board that describes, in detail, all of the grounds for the appeal, and the remedy requested, within thirty (30) days from the date the authorized chartering entity issues its final decision to deny a petition to form a new public charter school. A copy of the notice of appeal shall be submitted to the authorized chartering entity. In addition, contemporaneous with the submission of the notice of appeal, the petitioners/appellants shall also submit to the Board, a complete record of all actions taken with respect to the consideration of the public charter school petition. The record must be in chronological order, must be tabbed and indexed, and must contain, at a minimum, the following documents: ()

a. The complete record submitted to the Department, as provided in Subsection 401.01.a. through 401.01.e. of these rules. ()

b. A transcript, prepared by a neutral person whose interests are not affiliated with a party to the appeal, of the recorded public hearing conducted by the hearing officer, as described in Subsection 401.06 of these rules. ()

c. A copy of the hearing officer's recommendation. ()

d. Copies of audio or video recordings, if any, and the minutes of the public hearing conducted by the authorized chartering entity to consider the recommendation of the hearing officer, as described in Subsection 401.08.a. through 401.08.c. of these rules. ()

e. Copies of any additional correspondence between the petitioners/appellants and the authorized chartering entity relating to the petition subsequent to the public hearing conducted by the Department. ()

f. The final written decision provided by the authorized chartering entity to the petitioners/appellants. ()

g. No new evidence is permitted on appeal to the Board. ()

02. Public Hearing. A public hearing to review the final decision of the authorized chartering entity shall be conducted within a reasonable time from the date that the Board receives the notice of appeal, but not later than sixty (60) calendar days from such date. The public hearing shall be for the purpose of considering all of the materials in the record that were presented at prior proceedings. ()

03. Notice of Hearing. All parties in an appeal shall be notified of a public hearing at least ten (10) days in advance, or within such time period as may be mandated by law. The notice shall identify the time and place of the hearing; a statement of the legal authority under which the hearing is to be held; the particular sections of the statutes and any rules involved; the issues involved; and the right to be represented. The notice shall identify how and when documents for the hearing will be provided to all parties. ()

04. Appointment of Charter Appeal Committee or Public Hearing Officer. The Board may appoint a charter appeal committee composed solely of Board members, or a combination of Board members and Board staff, or a public hearing officer, for the purpose of conducting the public hearing. If the Board determines not to make such an appointment, then the Board shall conduct the public hearing. ()

05. Recommended Findings. If the public hearing is conducted by a charter appeal committee or appointed public hearing officer, then such committee or appointed public hearing officer shall forward to the Board all materials relating to the hearing as soon as reasonably practicable after the date of the public hearing. If requested by the Board, the entity conducting the public hearing may prepare recommended findings for the Board to consider. The recommended findings shall include specific findings on all major facts at issue; a reasoned statement in support of the recommendation; all other findings and recommendations of the charter appeal committee or public hearing officer; and a recommended decision affirming or reversing the decision of the authorized chartering entity, or such other action recommended by the charter appeal committee or public hearing officer, such as remanding the matter back to the authorized chartering entity, or redirecting the petition to another authorized chartering entity. A copy of the recommended findings shall be mailed or delivered to all the parties. ()

06. Final Decision and Order by the Board. The Board shall consider the materials forwarded by the entity conducting the public hearing, including any recommended findings of the charter appeal committee or appointed public hearing officer, as may be applicable, in a meeting open to the public at the next regularly scheduled meeting of the Board that occurs after the public hearing. If the public hearing was not conducted by the Board, then the Board may allow representatives for both the petitioner/appellant and the authorized chartering entity an opportunity to deliver oral arguments to the Board advocating their respective positions, limited to thirty (30) minutes for each party. Whether the public hearing is conducted by the Board or by a charter appeal committee, the Board shall issue a final written decision on such appeal within sixty (60) days from the date of the public hearing. The final decision and order of the Board shall be sent to both the petitioners/appellants and the authorized chartering entity, and will not be subject to reconsideration. With respect to such written decision, the Board may take any of the following actions: ()

a. Approve the charter, if the Board determines that the authorized chartering entity failed to appropriately consider the charter petition, or if it acted in an arbitrary manner in denying the request. In the event the Board approves the charter, the charter shall operate under the jurisdiction of the Commission, as provided by Section 33-5207(6), Idaho Code. ()

b. Remand the petition back to the authorized chartering entity for further consideration with directions or instructions relating to such further review. If the authorized chartering entity further considers the matter and again denies the petition, then that decision is final and there shall be no further appeal. ()

c. Redirect the petition for consideration by the Commission, if the appeal is regarding a denial decision made by the board of trustees of a local school district. ()

d. Deny the appeal submitted by the petitioners/appellants. ()

403. APPEAL RELATING TO THE DENIAL OF A REQUEST TO REVISE A CHARTER OR PERFORMANCE CERTIFICATE OR A CHARTER NON-RENEWAL OR REVOCATION DECISION.
The following procedures shall govern an appeal relating to the denial of a request to revise a charter or a charter non-renewal or revocation decision. ()

01. Submission of Appeal. The public charter school shall submit a notice of appeal in writing to the Board that describes, in detail, all of the grounds for the appeal, and the remedy requested, within thirty (30) days from the date of the written decision of the authorized chartering entity to non-renew or revoke a charter or to deny a charter or performance certificate revision. A copy of the notice of appeal shall be submitted to the authorized chartering entity. In addition, contemporaneous with the submission of the notice of appeal, the appellant charter school shall also submit to the Board one (1) hard copy and one (1) electronic copy of the complete record of all actions taken with respect to the matter being appealed. The record must be in chronological order and must be appropriately tabbed and indexed. The record must contain, at a minimum, all of the following documents: ()

a. The name, address, and telephone number of the appellant public charter school and the authorized chartering entity that issued the decision being appealed. ()

b. Copies of all correspondence or other documents between the appellant public charter school and the authorized chartering entity relating to the matter being appealed. ()

c. Copies of audio or video recordings, if any, and the minutes from all meeting(s) where the matter on appeal was considered or discussed. ()

d. The written decision provided by the authorized chartering entity to the appellant public charter school. ()

e. No new evidence will be considered on appeal to the Board. ()

02. Public Hearing. A public hearing to review the decision of the authorized chartering entity shall be conducted within thirty (30) days after the date of the filing of the notice of appeal. ()

03. Notice of Hearing. All parties in an appeal shall be notified of a public hearing at least ten (10) days in advance, or within such time period as may be mandated by law. The notice shall identify the time and place of the hearing; a statement of the legal authority under which the hearing is to be held; the particular sections of the statutes and any rules involved; the issues involved; and the right to be represented. The notice shall identify how and when documents for the hearing will be provided to all parties. ()

04. Appointment of Charter Appeal Committee or Public Hearing Officer. The Board may, in its reasonable discretion, determine to appoint a charter appeal committee, composed solely of Board members, or a combination of Board members and Board staff, or alternatively, to appoint a public hearing officer, for the purpose of conducting the public hearing. If the Board determines not to make such an appointment, then the Board shall conduct the public hearing. ()

05. Prehearing Conference. The entity conducting the public hearing may, upon written or other sufficient notice to all interested parties, hold a prehearing conference to formulate or simplify the issues; obtain admissions or stipulations of fact and documents; identify whether there is any additional information that had not been presented to the authorized chartering entity; arrange for exchange of any proposed exhibits or prepared expert testimony; limit the number of witnesses; determine the procedure at the hearing; and to determine any other matters which may expedite the orderly conduct and disposition of the proceeding. ()

06. Hearing Record. The hearing shall be recorded unless a party requests a stenographic recording by a certified court reporter, in writing, at least seven (7) days prior to the date of the hearing. Any party requesting a stenographic recording by a certified court reporter shall be responsible for the costs of same. The record shall be transcribed at the expense of the party requesting a transcript, and prepayment or guarantee of payment may be required. Once a transcript is requested, any party may obtain a copy at the party's own expense. ()

07. Recommended Findings. If the public hearing is conducted by a charter appeal committee or appointed public hearing officer, then such committee or public hearing officer shall forward to the Board all materials relating to the hearing as soon as reasonably practicable after the date of the public hearing. If so requested by the Board, the entity conducting the public hearing may prepare recommended findings for the Board to consider. The recommended findings shall include specific findings on all major facts at issue; a reasoned statement in support of the recommendation; all other findings and recommendations of the charter appeal committee or public hearing officer; and a recommended decision affirming, or reversing the action or decision of the authorized chartering entity. A copy of the recommended findings shall be mailed or delivered to all the parties. ()

08. Final Decision and Order by the Board. The Board shall consider the materials forwarded by the entity conducting the public hearing, including any recommended findings of the charter appeal committee or appointed public hearing officer, as may be applicable, in a meeting open to the public at the next regularly scheduled meeting of the Board that occurs after the public hearing. If the public hearing was not conducted by the Board, then the Board may allow representatives for both the appellant public charter school and the authorized chartering entity an opportunity to deliver oral arguments to the Board advocating their respective positions, limited to thirty (30) minutes for each party. Whether the public hearing is conducted by the Board, or by a charter appeal committee or appointed public hearing officer, the Board shall issue a final written decision on such appeal within sixty (60) days from the date of the public hearing. The decision shall be sent to both the appellant public charter school and the authorized chartering entity. With respect to such written decision, the Board may take any of the following actions: ()

a. Grant the appeal and reverse the decision of the authorized chartering entity if the Board determines that the authorized chartering entity failed to appropriately consider the non-renewal or revocation of the charter, or the request to revise the charter or performance certificate, or that the authorized chartering authority acted in an arbitrary manner in determining to non-renew or revoke the charter, or in denying the request to revise the charter or performance certificate. ()

b. Deny the appeal filed by the appellants. ()

404. EX PARTE COMMUNICATIONS.

Unless required for the disposition of a matter specifically authorized by statute to be done ex parte, no party to the appeal nor any representative of any such party to the appeal, nor any person or entity interested in such appeal, may communicate, directly or indirectly, regarding any substantive issue in the appeal with the Board or the charter appeal committee or any hearing officer appointed to hear or preside over the appeal hearing, except upon notice and opportunity for all parties to participate in the communication. ()

405. -- 499. (RESERVED)

500. MISCELLANEOUS.

01. LEA Designations. Section 33-5203(7), Idaho Code, provides that the board of trustees of a school district may designate a public charter school it authorizes as an LEA, with the concurrence of the public charter school board of directors. In order to designate a public charter school as an LEA, the board of trustees of the school district must submit to the Department the following no later than February 1 in order for any such designation to be effective for the following school year: ()

a. Verification that the board of trustees is the authorized chartering entity of the public charter school it wishes to designate as an LEA. ()

b. Written documentation that the board of trustees of the school district and the board of trustees of the public charter school have agreed to the designation of the public charter school as an LEA. Such documentation shall be signed by representatives of both parties. ()

501. PROCEEDINGS BEFORE THE COMMISSION.

01. Communications with Commission. All written communications and documents intended to be part of an official record of decision in any proceeding before the Commission or any hearing officer appointed by the Commission must be filed with the individual designated by the Commission. Unless otherwise provided by statute, rule, order, or notice, documents are considered filed when received by the officer designated to receive them, not when mailed or otherwise transmitted. ()

502. -- 999. (RESERVED)

IDAPA 08 – STATE BOARD OF EDUCATION
08.03.01 – RULES OF THE PUBLIC CHARTER SCHOOL COMMISSION
DOCKET NO. 08-0301-2201 (ZBR CHAPTER REPEAL)
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, and chapter 52, 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 19, 2022.

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 is the result of a review of the chapter for evaluation on how it can be improved, simplified, and streamlined. IDAPA 08.03.01 is being repealed in its entirety. Provisions that are not duplicative of IDAPA 08.02.04 are being moved to IDAPA 08.02.04.

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: 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 July 2022 Idaho Administrative Bulletin, [Volume 22-7, page 92](#).

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 Tracie Bent at (208)332-1582 or tracie.bent@osbe.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 October 26, 2022.

DATED this 2nd day of September, 2022.

Tracie Bent
Chief Planning and Policy Officer
State Board of Education
650 W State St.
PO Box 83720
Boise, Idaho 83720-0037
Phone: (208)332-1582
fax: (208)334-2632

IDAPA 08.03.01 IS BEING REPEALED IN ITS ENTIRETY