

**PLANNING, POLICY AND GOVERNMENTAL AFFAIRS
NOVEMBER 26, 2019**

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SUBJECT

Pending Rule Docket 08-0000-1900, Rules of the State Board of Education

REFERENCE

April 2019

Board received update on impact of legislature not extending codified rules after June 30, 2019.

May 2019

Board approved temporary and proposed rules initiating the process for putting back place rules that were codified at the end of the 2019 Legislative session.

BACKGROUND/DISCUSSION

Each year Idaho's codified administrative code is scheduled to expire on June 30th. As part of the legislature's annual duties during the legislative session they consider a bill to extend the codified rules, including those not rejected during the legislative session, until June 30th of the following year. During the 2019 Legislative Session, this bill did not pass, so all currently codified rules are scheduled to expire on June 30, 2019. To mitigate the potential chaos this could cause and ensuing potential liability to the state for not implementing many provision required by statute or the state constitution, the Governor has authorized the approval of temporary and proposed rules through an omnibus process that would reinstate the rules on a temporary basis effective July 1, 2019 and start the rule promulgation process with a temporary and proposed rule for each section of the Idaho Administrative Procedures Act (IDAPA). As part of this process, agencies also have the opportunity to identify any outdated or unneeded titles of rules and allow them to expire.

Each section of Administrative Code is divided by an IDAPA number, then title and chapter. As an example, IDAPA 08.02.01 is IDAPA 08, Title 02, Chapter 01. Administrative rules promulgated by the Board of Education encompass three sections of IDAPA including 22 chapters. Four chapters are found in IDAPA 55 pertaining to Career Technical Education. Two chapters are found in IDAPA 47 and pertain to Vocational Rehabilitation. Sixteen chapters are found in IDAPA 08 and pertain to all other public education. Board staff have identified eight chapters that could be allowed to expire, one of which would be moved to Board policy with a first reading scheduled for the June regular Board meeting. Any other negotiated rulemaking initiated this year will be required to follow the normal negotiated rulemaking process with the publication of a notice of intent, negotiation with interested parties, followed by a proposed rule being brought to the Board at the June or August Regular Board meetings for consideration. All approved proposed rules are then published in the administrative bulletin, which then triggers a 21-day public commit period. All pending rules, including those approved through this process will be brought back to the Board for consideration at the close of the 21-day public comment period. Any pending rules approved by the Board will then be submitted to the legislature for consideration in 2020.

The currently codified rules that have been identified for expiration are:

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- 08.01.01, Rules of the State Board of Education and Board of Regents – This title includes provision for handling contested case hearings and public information requests. Statutory provisions regarding these requirements have been updated since this rule was enacted. This rule is now redundant and out of date. Expiration of the rule will remove the obsolete rule and any potential conflicts with the statutory requirements now in place.
- 08.01.04, Residency (tuition purposes) – This will be moved to Board of Education Policy. This rule governs the process for the institutions to evaluate whether or not a potential student is eligible for residency for tuition purposes. Residency for postsecondary tuition purposes at the four-year institutions is governed through Section 33-3717B, Idaho Code. Pursuant to Section 33-105, Idaho Code, the Board is authorized to establish Board policy for its governance, and the governance of the agencies and institutions, including those impacting future students. A first reading of a new Board policy will be brought forward at the June Board meeting transitioning the existing rule to Board policy.
- 08.01.07, State Professional Studies Program – This chapter pertains to a loan repayment program that has not been funded in over a decade and is now obsolete.
- 08.01.08, Miscellaneous Rules of the State Board of Education – This chapter is made up of one provision providing an exception to the prohibition of alcohol in state facilities through Board policy. This chapter is unnecessary. Other sections of Idaho law govern the use of state owned facilities, including the Board's ability to set policy on the use of the facilities under its control.
- 55.01.01, Rules Governing Administration (CTE) – This chapter is redundant and unnecessary. The Board has statutory authority to set the types of policies described in this chapter and does not need an administrative rule granting the same authority.
- 55.01.02, Rules Governing Postsecondary Program Reduction or Termination (CTE). This chapter is redundant. The Board has statutory authority to set policy regarding the reduction and termination of programs, including CTE programs.
- 47.01.01, Rules Governing Idaho Division of Vocational Rehabilitation. This chapter pertains to the Division of Vocational Rehabilitation's management of the requirements established in the Rehabilitation Act of 1973 ("Act") and all subsequent amendments. This section has been amended over the years on a piece meal basis to respond to amendments to the Act and changes in federal guidance. Allowing this rule to expire will provide for an opportunity to bring a streamlined version forward that responds to the current requirements of the Rehabilitation Act as amended through the Workforce Opportunity and Innovation Act. An amended temporary rule will be brought forward for the Board's consideration at a later date.
- 47.01.02, Rules Governing Extended Employment Services – All administrative rules require some form of statutory authority to be enacted. The Extended Employment Services program is currently a program within the Division of Vocational Rehabilitation budget. While this title of rule was created in 2006 and

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accepted by the legislature in 2007, there is no statutory authority for it. The rule will not be able to be reenacted until such time as there is statutory authority to do so.

All other codified rules will be reenacted through this process and will go before the 2020 Legislature as pending rules with all new language. Pending rules at the legislative level are divided into two categories, fee rules and non-fee rules. Rules that enact a fee must be affirmatively accepted by both the House of Representatives and the Senate to be enacted. Non-fee rules are not required to be accepted by both chambers. Through the normal negotiated rulemaking process only the specific sections or subsections of the rule that are being amended are included in a single docket, allowing dockets for fee rules to be handled separately from dockets with amendments to policy that are not creating or amending a fee. Similar to that process, those sections of the rule title that include current fees will be separated out into their own docket.

IMPACT

Approval of the pending omnibus rule will allow the rules to be submitted to the Legislature for consideration.

ATTACHMENTS

Attachment 1 – Pending Rule Docket 08-0000-1900

Attachment 2 – Pending Amendments, Subsection 08.02.03.110

STAFF COMMENTS AND RECOMMENDATIONS

The proposed rule was published in June 19, 2019 (Vol.12-6SE) Administrative Rules bulletin. Staff received no comments during the ensuing 21-day comment period. During the 21-day comment period staff received approximately 753 requests for a public hearing on this docket. The majority of the requests and comments received were in a form letter. Written comments received during this time period included:

- Five comments request the removal of “common core standards” or “federal standards”
- 425 comments in support of maintaining, protecting the science standards and indicated the support of strong science standards
- 19 comments in favor of the current contents standards without specifying subject area.

In response to the requests for public hearings, staff conducted five public hearings. The hearings were conducted in Coeur d’Alene at North Idaho College, Nampa at the College of Western Idaho, Twin Falls at the College of Southern Idaho, Idaho Falls at the College of Eastern Idaho, and in Challis at the Legion Hall. Due to the public hearings, the public comment period was extended to October 4, 2019. At the start of each hearing staff went over what was covered in the docket, which two content standards were part of the original standards referred to the “common core” standards and the process that they went through

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went they were originally adopted and amended in 2016 when they were re-adopted. While Docket 08-0000-1900 covers much more than the Idaho content standards, the majority of the comments received during the hearings was regarding the standards, additional comments covered concerns over too much testing or teaching to a test. The comments against the standards ranged from comments about indoctrination, United Nation conspiracies, and accusations of indoctrinating students to become “liberal” or change their sexual orientation. Additionally, there was a wide range of understanding about which standards were being referenced when they were referencing “the common core standards.” References ranged from the English language arts and mathematics content standards to combinations that also included science and social studies. Of those that provided comments about the “common core” standards, many of the comments were not based on factual information or were general statements regarding the standards being to low. For those individuals who provided examples of their concerns about the standards, the overwhelming majority of them were based on experiences with curriculum chosen by the school districts rather than the standards themselves.

Location	# Testifying	# Supporting Standards
Coeur d’Alene	31	04
Nampa	37	20
Twin Falls	30	21
Idaho Falls	51	26
Challis	12	12
Total	161	83

Fifteen additional written comments were received, ten were written versions of verbal comments made at the hearings. Verbal comments were also solicited at four of the five regional superintendents’ meetings held in September and October. Only one concern was raised regarding clarification of the at-risk definition in rule.

There has been one change based on public comment received during the public comment period requesting clarification of the definition of at-risk students in IDAPA 08.02.03.110. HB 293 (2019) established a definition for at-risk students as that term is used in Chapter 10, Title 33. This new definition that went into effect July 1, 2019 supersedes the definition in Administrative Code. The amendment to this section of rule removes the definition in rule and points individuals back to the definition in Section 33-1001, Idaho Code.

Once approved, pending rules will be submitted to the Department of Administration for publication in the Idaho Administrative Rules Bulletin and are then forwarded to the legislature for consideration. As a pending fee rule, this rule must be accepted by the House and the Senate to be accepted during the 2020 Legislative Session. Pending rules become effective at the end of the legislative session in which they are submitted, if they are not rejected by the Legislature.