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Director

# Legislative Services Office Idaho State Legislature

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## MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Education Committee and the House Education Committee  
**FROM:** Principal Legislative Research Analyst - Eric Milstead  
**DATE:** September 16, 2013  
**SUBJECT:** State Board of and State Department of Education - State Department of Education

IDAPA 08.02.02 - Rules Pertaining To The Rules Governing Uniformity - ensures schools & students accounted for through accreditation & Idaho's Star Rating System (Docket No. 08-0202-1302)

IDAPA 08.02.02 - Rules Pertaining To The Rules Governing Uniformity - removes barriers in Bd. approval of teacher preparation (Docket No. 08-0202-1303)

IDAPA 08.02.02 - Rules Pertaining To The Rules Governing Uniformity - Idaho Educator Credential (Docket No. 08-0202-1304)

IDAPA 08.02.02 - Rules Pertaining To The Rules Governing Uniformity - purported violations of Code of Ethics for Idaho Educators (Docket No. 08-0202-1305)

IDAPA 08.02.03 - Rules Pertaining To The Rules Governing Thoroughness - high school graduation requirements (Docket No. 08-0203-1302)

IDAPA 08.02.03 - Rules Pertaining To The Rules Governing Thoroughness - language replaces "Gun-free-Schools" language (Docket No. 08-0203-1303)

IDAPA 08.02.03 - Rules Pertaining To The Rules Governing Thoroughness (Fee Rule) - online course portal (Docket No. 08-0203-1304)

1. IDAPA 08.02.02 - Rules Pertaining To The Rules Governing Uniformity - (Docket No. 08-0202-1302)

The State Department of Education submits notice of temporary and proposed rulemaking at IDAPA 08.02.02 -- Rules Governing Uniformity. The temporary and proposed rule docket includes new language to clarify which alternative schools may operate as programs and which alternative schools must obtain standalone accreditation. The department states that the temporary and proposed rule will better ensure that schools and students are being properly accounted for.

Specifically, the rule provides that if an alternative school meets certain criteria, including criteria relating to attendance, enrollment, instructional models, then the school must seek and obtain accreditation. (Rule Section 140.01.a through 140.01.e)

The agency states that negotiated rulemaking was not conducted because of the need for temporary rulemaking.

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Cathy Holland-Smith, Manager  
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The effective date of the temporary rule was June 20, 2013.

The agency's temporary and proposed rule appears to be authorized pursuant to sections 33-105, 33-107 and 67-5226, Idaho Code.

2. IDAPA 08.02.02 - Rules Pertaining To The Rules Governing Uniformity - (Docket No. 08-0202-1303)

The State Department of Education submits notice of temporary and proposed rulemaking at IDAPA 08.02.02 -- Rules Governing Uniformity. The temporary and proposed rule in this docket revises the title of this route to teacher certification. The agency notes that this temporary and proposed rule includes no substantive changes in the requirements, approval process or procedures relating to this route to certification. The changes reflected in the text of this rule include eliminating the term "computer based alternative route to teacher certification" and using the term "alternative route to teacher certification" and "non-traditional route."

We make only one comment regarding the language in the temporary and proposed rule and that relates to the use of the term "alternative route certification program" and the term "non-traditional route." There may be a sound reason to use the two different terms -- "alternative" and "non-traditional," but it appears the two terms are used to describe the same "route." We note that perhaps using only one of the two terms may avoid confusion.

The effective date of the temporary rule was June 20, 2013.

The agency's temporary and proposed rule appears to be authorized pursuant to section 33-105, 33-17 and 33-5226, Idaho Code.

3. IDAPA 08.02.02 - Rules Pertaining To The Rules Governing Uniformity - Idaho Educator Credential (Docket No. 08-0202-1304)

The proposed rule in this docket provides language that clarifies that provisions relating to certain renewal requirements governing the Mathematics In-Service Program and the Idaho Comprehensive Literacy Course apply only to active teachers (See, Rule 016.01 and 016.04).

The agency's proposed rule appears to be authorized pursuant to section 33-105, Idaho Code.

4. IDAPA 08.02.02 - Rules Pertaining To The Rules Governing Uniformity - (Docket No. 08-0202-1305)

The proposed rule in this docket revises language relating to the Code of Ethics for Idaho Professional Educators. The agency states that these revisions were approved after lengthy discussion by the Professional Standards Commission (PSC). The agency also notes that the proposed rule in this docket reflects extensive research and consultation with the Deputy Attorney General assigned to the PSC. Some of the revisions found in the proposed rule reflect updating language to reflect changes in technology (See, Rule 076.03 and 076.11.f.--revising language to reflect new and virtual technology). Other revisions include specifying, in certain situations, that unethical conduct includes failure to notify licensing authorities of a prior conviction relating to the violation of statutes or rules governing teacher certification. (See Rule Sections 076.05.d and 076.05.i). Other changes simply involve adding clarifying or explanatory text to the titles of certain subsections of the rule (See, for example, 076.09--Principle VIII and 076.10 -- Principle 10, which both include new title descriptors.)

The agency states that negotiated rulemaking was not conducted because the rule was "created through a committee of practitioners appointed by the State Board of Education" and consequently, multiple stakeholders were informed.

The agency's proposed rule appears to be authorized pursuant to sections 33-105 and 33-107, Idaho Code.

5. IDAPA 08.02.03 - Rules Pertaining To The Rules Governing Thoroughness - high school graduation requirements (Docket No. 08-0203-1302)

The temporary and proposed rule reflects changes relating to the possible accelerated graduation of students through two new programs authorized by the legislature. Senate Bill 33-1628 established the "8-in-6" program to help students complete 8 years of school work in years, while Senate Bill 1028 established the Master Advancement Program which allows districts to use mastery examination to permit students to progress more quickly through school. Both programs require revisions to certain sections of rule governing requirements for high school and middle school. The changes are found in Rule Section 104.03, which is eliminated; Rule Section 105.01.d, which revises text governing requirements relating to mathematics; and Rule Section 105.05, which revises requirements relating to middle school.

The agency notes that the temporary rule was implemented to allow students to begin taking advantage of the programs provided for in Senate Bills 1028 and 1628.

The agency does not speak to the issue of negotiated rulemaking.

The agency's temporary and proposed rule appears to be authorized pursuant to sections 33-105 and 33-107, Idaho Code.

6. IDAPA 08.02.03 - Rules Pertaining To The Rules Governing Thoroughness - language replaces "Gun-free-Schools" language (Docket No. 08-0203-1303)

The proposed rule reflects a single change: in Section 160 that requires school districts to have policies encompassing, among other things, "Gun free Schools," that language has been stricken and replaced with the following phrase: "Students Prohibited from Possessing Weapons on Campus." The agency states that this change accurately reflects the prohibition of weapons on campus and the power of boards of trustees to authorize select employees to carry firearms on campus.

The agency's proposed rule appears to be authorized pursuant to sections 33-105 and 33-107, Idaho Code. The provisions of the proposed rule appear to be consistent with section 18-3302D, Idaho Code.

7. IDAPA 08.02.03 - Rules Pertaining To The Rules Governing Thoroughness (FEE RULE) - online course portal (Docket No. 08-0203-1304)

The proposed Fee Rule reflects costs related to the process by which the Department will review and approve online courses, pursuant to Section 33-1024, Idaho Code. The Department states that it will charge online course providers a submission fee based upon the number of courses offered. While we note that no specific fee amount is provided for in the proposed rule, the Department states that such fee will not exceed the actual cost of the course review. See Rule Section 128.06)

The department states that negotiated rulemaking was not conducted because "this is a previously published rule in response to state law changes."

The proposed fee rule appears to be authorized pursuant to section 33-105 and 33-107, Idaho Code.

cc: State Board of and State Department of Education - State Department of Education  
Superintendent Tom Luna, Nick Smith, Christina Linder, Luci Willits, Matt McCarter