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**IDAPA 08
TITLE 01
Chapter 02**

08.01.02 - PERSONNEL RULES OF THE STATE BOARD OF EDUCATION

000. -- 099. (RESERVED).

100. APPOINTING AUTHORITY.

Except where it has expressly delegated its authority, the State Board of Education and Board of Regents of the University of Idaho (hereinafter collectively the "Board") is the appointing authority for each agency, institution, school, office, and department under its governance, except for the State Library and the Idaho State Historical Society whose employees are subject to the State Library Board and the Board of Trustees of the Idaho State Historical Society. (7-1-93)

101. CATEGORIES OF EMPLOYEES.

01. Classified Employees. Any person whose appointment, employment status, personnel actions, and primary employment benefits are subject to the Idaho personnel system established pursuant to chapter 53, title 67, Idaho Code, and who is regulated by the rules of the Idaho Personnel Commission and enabling legislation. To secure substantial equity among employees similarly situated, it is declared to be the express policy of the Board that employees of the University of Idaho who would be subject to the Idaho classified personnel system if they performed the same duties at another institution of higher education (hereinafter referred to as "University of Idaho classified employees") are entitled to the same compensation, vacation and sick leave, promotion, demotion, termination, merit increase, layoff rights, and employee grievance procedures that are provided to their counterparts at the other institutions of higher education by the laws of Idaho and the rules of the Idaho Personnel Commission; however, in the event a regulation of the Board directed to the University of Idaho classified employees is at variance with the rules of the Idaho Personnel Commission in these areas, the rules of this Board govern. (7-1-93)

02. Exempt Employees. Any person appointed to or holding a position at an institution, agency, school, department, or office whose position is not subject to the provisions of chapter 53, title 67, Idaho Code. (7-1-93)

a. Pleasure of the board. Notwithstanding the provisions of Subsections 102.02 and 103.02.c. of this chapter, the Board's executive director and the chief executive officers of each agency, institution, or school under the governance of the Board serve at the pleasure of the Board. They may be dismissed from their administrative positions at any time with or without cause or written notice. The Superintendent of Public Instruction, the chief executive officer of the State Department of Education, being an elected constitutional officer, may not be dismissed by the Board. (7-1-93)

b. Administrative employees. The Board's executive director, the chief executive officers, and other personnel in such positions at the institutions, agencies, school, department, or office as may be designated by the chief executive officer as administrative positions. (7-1-93)

c. Institutional faculty. All employees who hold the rank of instructor or a higher rank at the University of Idaho, Idaho State University, Boise State University, Lewis-Clark State College, and Eastern Idaho Technical College. (7-1-93)

d. School faculty. Employees holding instructional or instructional support appointments at the State School for the Deaf and the Blind. (7-1-93)

e. Temporary or special exempt employees. Persons appointed to positions that are either temporary or special, and generally meet specific position requirements for (1) a grant or contract of a specified duration; (2) part-time teaching or other responsibilities; or (3) fulfilling the responsibilities of a permanent position on a temporary or emergency basis. (7-1-93)

102. LETTER OF APPOINTMENT -- PERSONNEL ACTION FORM.

01. Classified Employees. All salaried employees of the Board who are subject to the Idaho classified

personnel system or who are University of Idaho classified employees receive upon appointment personnel action forms in lieu of letters of appointment. The rights of these employees to continuous employment, if any, are governed by the rules of the Idaho Personnel Commission, enabling legislation, and these rules where applicable. (7-1-93)

02. Exempt Employees. All salaried employees of the Board who are not subject to the Idaho classified personnel system and are not University of Idaho classified employees serve pursuant to letters of appointment. The letter of appointment must include the period of the appointment, salary, pay periods, position title, employment status, and reappointment rights, if any, and such other materials as the agency, institution, school, department, or office may elect to include in order to define the primary elements of the contract of employment. Each employee must acknowledge receipt and acceptance of the terms of the letter of appointment by signing and returning a copy to the agency, institution, school, office, or department initiating the offer of appointment. Failure or refusal of the employee to sign and return a copy of the letter of appointment within the time specified in the letter is deemed rejection of the offer of employment unless the parties have mutually agreed to extend the time. Nothing in this paragraph prohibits the agency, institution, school, office, or department from extending another offer to the employee in the event the initial offer was not signed and returned in a timely manner. Any alteration by the employee of the offer is deemed a counter-offer requiring an affirmative act of acceptance by an officer authorized to enter into contracts of employment binding the agency, institution, school, office, or department. (7-1-93)

103. TERM OF APPOINTMENT -- NONRENEWAL -- GRIEVANCE.

01. Classified Employees. Term of appointment and grievance procedures for classified employees or University of Idaho classified employees are provided for in Subsection 101.01 of this chapter. A University of Idaho classified employee may appeal to the Board from a final decision of the University of Idaho under its internal grievance procedure to the same extent that the employee's counterparts at the other institutions of higher education may appeal to the Idaho Personnel Commission. The appeal procedure before the Board must be as now or hereafter provided by Section 67-5316, Idaho Code, and Rule 20 of the Idaho Personnel Commission, or their successor parts, except insofar as they are inconsistent with either the substantive rules or rules of procedure of the Board. (7-1-93)

02. Exempt Employees. (7-1-93)

a. Employees occupying faculty positions. The appointment, advancement, and retention of employees occupying faculty positions at the University of Idaho, Idaho State University, Boise State University, Lewis-Clark State College, and Eastern Idaho Technical College are governed by Sections 200 through 205 of this chapter, except as provided for in Subsection 103.02.c. (7-1-93)

b. Temporary or special employees. As provided for in Subsection 101.02.e. of this chapter, the Board recognizes a class of temporary or special employees who have no expectation of continuing employment beyond an existing contract period and whose service in no way qualifies them for consideration for tenure status in the appointment. Each institution may negotiate the terms of contracts of employment of temporary or special employees depending upon the particular needs of the institution, but the Board remains the appointing authority. Under no circumstances, however, are temporary or special employees legally entitled to any advance notice, cause, or reasons for the institution not electing to enter into another contract of employment for another period, nor is such action or inaction by the institution grievable or appealable in any way whatsoever. (7-1-93)

c. Nontenured, non-classified employees. All salaried employees of the Board who are not tenured faculty members at the University of Idaho, Idaho State University, Lewis-Clark State College, Boise State University, or Eastern Idaho Technical College, are not subject to the Idaho classified personnel system, and are not University of Idaho classified employees, have fixed terms of employment. No contract of employment with such an employee may exceed one (1) year without the prior approval of the Board. Employment beyond the contract period may not be legally presumed. Renewal of an employment contract is subject to the discretion of the chief executive officer of the agency, institution, school, office, or department, and of the Board. (7-1-93)

i. Notice of nonrenewal. Notice of the intention of the chief executive officer to recommend to the Board nonrenewal of a contract of employment must be given in writing to the employee at least sixty (60) calendar days before the end of the existing period of appointment; provided, however, that notice of non-reappointment must be provided to nontenured institutional faculty members in accordance with Section 202 of this chapter. Reasons for recommending nonrenewal need not be stated. However, the Board recognizes that while nonrenewal without cause

is its legal right, still nonrenewal may impose a severe economic and personal loss on an employee. While it is unlikely that an employee would not have actual notice of the reasons for nonrenewal, the Board authorizes each institution, agency, school, office, or department electing to do so, to give to the employee a written statement of the reasons for nonrenewal. It is not the intention of the Board, however, to convert thereby nonrenewal of a fixed-term contract to dismissal for cause, or to establish or shift to the institution, agency, school, office, or department any burden of proof, but rather to soften the effects of nonrenewal upon an individual employee. Failure to give timely notice of nonrenewal because of mechanical, clerical, mailing, or similar error is not deemed to renew the contract of employment for another full term, but the existing term of employment must be extended to the number of days necessary to allow sixty (60) calendar days notice to the employee. (7-1-93)

ii. Grievance of nonrenewal. As a general rule, nonrenewal and recommendation of nonrenewal are not grievable within the agency, institution, school, office, or department, nor are they appealable to the Board. If a recommendation of nonrenewal is rejected by the Board and the contract of employment renewed for another term, the employee may thereafter use the internal grievance procedure to seek to have the unfavorable recommendation expunged from the personnel records of the agency, institution, school, office or department. Under no circumstances, however, will the Board's record of recommendation of nonrenewal and rejection of that recommendation be expunged. If an employee alleges in writing to the chief executive officer of the agency, institution, school, department, or office that the recommendation of nonrenewal of the contract of employment has been made for legally impermissible reasons, the employee is entitled to use the internal grievance procedure to test the allegation; provided, however, that the allegation must be filed in the office of the chief executive officer within fifteen (15) calendar days after the employee receives notice of the intention to recommend nonrenewal; and provided further, that the allegation must be made with particularity and support by such documentary evidence and statements of witnesses as may be reasonably available to the employee under the circumstances. The normal internal grievance procedure must be used unless changed by mutual consent of the parties. The ultimate burden of proof rests with the employee. The agency, institution, school, office, or department is required to offer evidence of its reasons for nonrenewal only if the employee has made a prima facie showing that the recommendation of nonrenewal was made for legally impermissible reasons. Unless mutually agreed to by the parties in writing, the use of the grievance procedure will not delay the Board's consideration of the recommendation of nonrenewal, nor will it delay the effective date of nonrenewal. The decision of the agency, institution, school, office, or department is final. (7-1-93)

iii. Petition -- Board Review. The employee may elect to petition the Board to review the final action of the agency, institution, school, office, or department. Any petition for review must be filed at the Office of the State Board of Education within fifteen (15) calendar days after the employee receives notice of final action under the grievance procedure. The Board may agree to review the final action, setting out whatever procedure and conditions for review it deems appropriate, or it may choose not to review the final action. The fact that a review petition has been filed will not stay the effectiveness of the final action, nor will the grant of a petition for review, unless specifically provided by the Board. Board review is not a matter of right. An employee need not petition for Board review in order to have exhausted administrative remedies for purposes of judicial review. (7-1-93)

104. DISMISSAL FOR CAUSE.

All employees of the Board or of the agencies, institutions, school, or office under its jurisdiction are subject to dismissal for adequate cause during the period of employment. "Adequate cause" means one (1) or more acts or omissions which, singly or in the aggregate, have directly and substantially affected or impaired an employee's performance of his professional or assigned duties or the best interests of the institution, agency, school, or office. (7-1-93)

01. Classified Employees. Dismissal of classified employees is as provided for in chapter 53, title 67, Idaho Code, and rules of the Idaho Personnel Commission. A University of Idaho classified employee may appeal to the Board from a final decision of the University of Idaho to the same extent that the employee's counterparts at other institutions may appeal to the Idaho Personnel Commission; provided, however, that in the event rules of the Idaho Personnel Commission are inconsistent with either the substantive rule or rules of procedure of the Board, the rules of the Board govern. (7-1-93)

02. Exempt Employees. Dismissal of exempt employees is as provided for in Section 204 of this chapter. Section 204 does not apply to exempt employees of the State Department of Education pursuant to Section 33-127, Idaho Code, which authorizes the state superintendent of public instruction to hire and dismiss employees of the State Department of Education. (7-1-93)

03. Internal Procedures. Section 204 of this chapter provides for dismissal or termination of exempt employees and establishes a procedure whereby the employee may appeal to the Board the chief executive officer's recommendation of dismissal or termination. In addition, each institution, agency, school, and office must establish a written procedure for dismissal or termination of employees for cause which shall include the following: (7-1-93)

a. An internal opportunity to contest the reasons for dismissal or termination with the individual responsible for making the recommendation of dismissal or termination to the chief executive officer. This opportunity need not be in the nature of a grievance hearing but shall afford the employee notice of the reasons for termination or dismissal; the evidence supporting the decision; and an opportunity to present reasons, evidence, or (7-1-93)

b. An internal appellate procedure which may be used by the employee following the receipt of the written notice of the chief executive officer's recommendation for dismissal of the employee as provided in Subsection 204.06.b. of this chapter. Should the employee not elect to use the internal appellate procedure, he may appeal to the Board as provided in Subsection 204.06.b.i. of this chapter. In no event may the employee use both procedures. Each institution shall establish a reasonable time frame to complete the internal appeals process, said time not to exceed thirty (30) calendar days from the date the notice of dismissal or termination is given to the employee. (7-1-93)

105. NONDISCRIMINATION.

No one may be denied employment, denied renewal of a contract of employment, or dismissed from employment at any agency, institution, school, or office under the governance of the Board because of race, color, national origin, religion, sex, age, disability, or veteran's status, except that an employee may be terminated for age pursuant to the retirement policy of the Board in Governing Policies and Procedures, Section II, Subsection K. (7-1-93)

106. OPTIONAL RETIREMENT PROGRAM.

Pursuant to Section 33-107A, Idaho Code, the State Board of Education is authorized to establish a retirement program under which contracts providing retirement and death benefits may be purchased for members of the faculty and nonclassified staff of the University of Idaho, Idaho State University, Boise State University, Lewis-Clark State College, and the Office of the State Board of Education. The State Board of Education provides for the administration of the Optional Retirement Program in accordance with the Idaho State Board of Education Optional Retirement Plan (hereinafter "the Plan"), a copy of which is on file at the Office of the State Board of Education and at the institutions mentioned above. The Plan may be amended from time to time in accordance with its terms and applicable regulations of the Internal Revenue Service. (7-1-93)

01. Designation of Contract Providers. The Board has initially designated companies from which contracts are to be purchased under the optional retirement program. (7-1-93)

02. Eligible Employees. Pursuant to Section 33-107A, Idaho Code, eligible employees are those active faculty and nonclassified employees initially hired or appointed on or after July 1, 1990, but shall exclude employees who are active members of the public employees retirement system of Idaho immediately prior to appointment to the faculty or nonclassified staff for an appointment which occurs after July 1, 1990. Eligible employees shall participate in the Optional Retirement Program at the time of entry into service. Classified employees are ineligible for participation. Active faculty and nonclassified staff hired before July 1, 1990, may make a one-time irrevocable election to participate in the optional retirement program. The election must be made by September 28, 1990, and is treated as a separation from service for benefits under chapter 13, title 59, Idaho Code. A person electing to participate in the optional retirement program is ineligible to participate in the public employees retirement system for as long as he remains continuously employed in any faculty or nonclassified position at any of the institutions under the governance of the State Board of Education. "Eligible employees" shall exclude classified employees, employees whose employment is expected to be less than five (5) months, and employees whose employment is incidental to their status as students at the institution. (7-1-93)

a. Classified employees. For purposes of this section, "classified employee" means any person whose appointment, employment status, personnel actions, and primary employment benefits are subject to the Idaho Personnel System established pursuant to chapter 53, title 67, Idaho Code, or who is a University of Idaho classified employee. (7-1-93)

b. Active faculty and nonclassified staff. For purposes of this section, "active faculty and nonclassified staff" means any exempt employee as set forth in Subsection 101.02 of these rules and includes administrative employees, institutional faculty, temporary or special exempt employees, and any employee serving at the pleasure of the Board as defined therein. (7-1-93)

107. -- 199. (RESERVED).

200. TENURE.

Tenure is a condition of presumed continuous employment following the expiration of a probationary period. After tenure has been awarded, the faculty member's service may be terminated only for adequate cause, the burden of proof resting with the institution, except in the case of retirement for age, under conditions of financial exigency as declared by the State Board of Education and Board of Regents of the University of Idaho ("Board"), in situations where extreme shifts of enrollment have eliminated the justification for a position, or where the Board has authorized elimination or substantial reduction in an academic or vocational program. Tenure status is available only to full-time institutional faculty members, as defined by appropriate institutional authority, whose appointments have been approved by the Board. All faculty appointments are subject to the approval of the Board. No nontenured member of the faculty should expect continued employment beyond the period of his current appointment as approved by the Board. Any commitment to employ a nontenured member of the faculty beyond the period of his current appointment is wholly ineffective without prior approval of the Board. (7-1-93)

01. Acquisition of Tenure. Institutional faculty members, after meeting certain requirements set forth in Section 201, may acquire tenure. Acquisition of tenure is not automatic but requires an explicit judgment, decision, and approval. However, when a faculty member becomes eligible for tenure, and in no case later than during the faculty member's seventh full academic year of employment at the institution, the faculty member must be evaluated for the acquisition of tenure. (7-1-93)

02. Notification. An individual eligible for tenure must be informed, by proffered written contract, of appointment or nonappointment to tenure not later than June 30 of the academic year during which the decision is made. (7-1-93)

03. Nonappointment to Tenure. In case of nonappointment to tenure in accordance with the standards of eligibility set forth in Section 201, the faculty member must be given a letter of notice of nonreappointment in accordance with the provisions of Section 202. (7-1-93)

201. STANDARDS OF ELIGIBILITY FOR TENURE STATUS.

01. Annual Appointments. All first-year appointments are made for a period not to exceed one (1) year. Ordinarily, appointments are made for periods of one (1) year each before a tenure decision becomes mandatory. Such decisions are usually made no earlier than during the fifth full academic year of employment and not later than the seventh such year. (7-1-93)

02. Service in Professorial Rank. All satisfactory service in any professorial rank may be used to fulfill the time requirement for acquiring tenure. Each institution must develop criteria and rules by which prior service may be evaluated for inclusion in experience necessary for acquiring tenure. (7-1-93)

03. Service in Instructor Rank. A maximum of two (2) years satisfactory service in the rank of instructor at the institution will be allowed in partial fulfillment of the time requirement in the professorial ranks. Faculty members who hold the rank of senior instructor are eligible for tenure status, as herein provided, even though they teach in fields which have established professorial ranks. Instructors in vocational-technical schools and departments are eligible for tenure as herein provided. (7-1-93)

04. Exceptional Cases. Tenure may be awarded prior to completion of the usual probationary period in certain exceptional cases. Prior to attaining tenure status, the burden of proving worth rests with the individual. (7-1-93)

202. NOTICE OF NONREAPPOINTMENT OR TERMINATION OF APPOINTMENT OF NONTENURED FACULTY MEMBERS.

Notice of nonreappointment or termination must be given in writing in letter form and in accordance with the following standards: (7-1-93)

01. Nonrenewal -- First Year of Service. Not later than March 1 of the first full academic year of service if the appointment is not to be renewed at the end of the academic year; or if a one-year appointment terminates during an academic year and is not to be renewed, at least three (3) months in advance of its termination. (7-1-93)

02. Nonrenewal -- Second Year of Service. Not later than December 15 of the second full academic year of service if the appointment is not to be renewed at the end of that year; or, if the appointment terminates during an academic year and is not to be renewed, at least six (6) months in advance of its termination. (7-1-93)

03. Nonrenewal -- Three (3) or More Years of Service. At least twelve (12) months before the expiration of an appointment after two (2) or more full academic years in the institution. (7-1-93)

04. Financial Exigency. Notice of nonreappointment, as provided in Subsections 202.01, 202.02, and 202.03 above, is not required when the Board has authorized a reduction in force resulting from a declaration of financial exigency and a nontenured faculty member is to be laid off. In that event, notice of layoff must be given as provided under the rules for reduction in force (Section 258). (7-1-93)

05. Request for Review. Nonreappointment of term employees at the end of their term of appointment is not subject to investigation or review except that the employee may request an investigation or review to establish that written notice was or was not received in accordance with the time requirements set forth in this section. In such cases, the investigation or review will be concerned only with manner and date of notification of nonreappointment and will not consider grounds for nonreappointment (see Subsection 204.07). The employee must request such investigation or review in writing of the chief executive officer within fifteen (15) days of receipt of the written notice of nonreappointment. (7-1-93)

203. EVALUATION OF FACULTY MEMBERS.

01. Annual Evaluation. Each year the chairman of a department must submit to the dean of the chairman's college an evaluation of each faculty member in the department. This evaluation, together with the opinion of higher administrators, will be used as one basis for the final recommendation relative to reappointment, nonreappointment, acquisition of tenure, or other personnel action, whichever is appropriate. The chairman must communicate an assessment of strengths and weaknesses to each faculty member evaluated. (7-1-93)

02. Evaluation Criteria. Evaluation of faculty should be made in terms of the individual's potential effectiveness as a permanent member of the local academic community. (7-1-93)

03. Evaluation for Tenure. It is expected that the chief executive officer making the recommendation for tenure will have sought and considered evaluations of each candidate by a committee appointed for the purpose of annual evaluations or tenure status. Such committee must consist of tenured and nontenured members of the department, if available; equitable student representation; and one (1) or more representatives from outside the department. Committee appointment procedure and representation are subject to prior approval by the Board. Each member of the committee has an equal vote on all matters. The committee must give proper credence and weight to collective student evaluations of faculty members, as evidenced by an auditing procedure approved by the chief executive officer. The recommendation of the committee will be forwarded in writing through appropriate channels, along with written recommendations of the department chairperson or unit head, dean, and appropriate vice president, to the chief executive officer, who is responsible for making the final decision on submitting the recommendation to the Board. The Board retains full authority to accept or reject recommendations made pursuant to Section 203. The Board constitutes the final authority concerning reappointment, non-reappointment, or the acquisition of tenure of all faculty members. Procedures for evaluation for tenure at Eastern Idaho Technical College must be consistent with the intent of this subsection. (7-1-93)

04. Periodic Performance Review. It is the policy of the Board that at intervals not to exceed five (5)

years following the award of tenure to faculty members, the performance of tenured faculty must be reviewed by members of the department or unit and the department chairperson or unit head. The review must be conducted in terms of the tenured faculty member's continuing performance in the following general categories: teaching effectiveness, research or creative activities, professional related services, other assigned responsibilities, and overall contributions to the department. (7-1-93)

a. Procedures for periodic review. Each institution must establish procedures for the performance review of tenured faculty members at the institution. Such procedures are subject to the review and action of the Board. Each year the academic vice president or designee is responsible for designating in writing those tenured faculty members whose performance is subject to review during the year. (7-1-93)

b. Review standards. If during the periodic review, the performance of a tenured faculty member is questioned in writing by a majority of members of the department or unit, the department chairperson or unit head, the appropriate dean, the appropriate vice president, or the chief executive officer, the appropriate vice president or equivalent administrator must decide whether a full and complete review must be conducted in accordance with the procedures established for the initial evaluation for tenure at the institution. If during the periodic review, the performance of a tenured faculty member is not questioned in writing as described in the preceding paragraph, members of the department or unit and the department chairperson or unit head must prepare a written review statement that the performance review has been conducted and that a full and complete review is not required. (7-1-93)

c. Termination of employment. If, following a full and complete review as required by Subsection 203.04.b., a faculty member's performance is judged to have been unsatisfactory or less than adequate during the period under review, the chief executive officer may initiate termination of employment procedures for the faculty member (see Section 204). (7-1-93)

204. DISMISSAL OR TERMINATION OF EXEMPT EMPLOYEES.

01. Employee Dismissal. Under various provisions of title 33, Idaho Code, and applicable provisions of the constitution of the state, the Board may dismiss, for cause, any employee of any institution, agency, school, or office under its constitutional or statutory authority except as provided in Subsection 104.02 of these rules. (7-1-93)

02. Grounds for Termination. Termination of an employee before the expiration of the stated period of his appointment or of a faculty member who has been granted tenure, except by resignation, or by retirement for age in accordance with these rules, will be only for good cause shown. Any employee may be laid off in conjunction with a reduction in force approved by the Board and resulting from a declaration of financial exigency. Layoff and reinstatement of employees to duty will be as provided in the Board's rules regarding reduction in force and employment preference (Part III). (7-1-93)

03. Cause. Any conduct seriously prejudicial to an institution, agency, school, department, or office may constitute cause for dismissal or termination of any employee. Examples include, but are not limited to, immorality, criminality, dishonesty, unprofessional conduct, actions in violation of policies, directives, or orders of the Board, unsatisfactory or less than adequate performance of his assigned or contractual duties, or failure to perform his assigned or contractual duties. "Adequate cause" also is defined in Section 104 of this chapter. (7-1-93)

04. Violation of Law. Violation of Sections 33-3715 and 33-3716, Idaho Code, or violation of any law which results in a felony conviction of an employee may be cause for suspension with pay or dismissal from the institution, agency, school, or office. Dismissal must be preceded by the procedures in Section 204. It is not necessary that such violations be committed on the campus of one (1) of the institutions of the state of Idaho unless the same is a material element of such violation. (7-1-93)

05. Failure to Fulfill Assigned Duties. If, without the approval of the chief executive officer, an employee for reasons other than illness or institutional business, fails to meet his teaching commitments or other assigned duties, the chief executive officer may suspend the employee from his assigned duties, with pay, or recommend the employee's dismissal. (7-1-93)

06. Procedures. In each case the issue of whether or not good cause for termination or dismissal exists

should be determined fairly by the institution, recognizing and affording protection to the rights of the employee and to the interests of the Board and its institutions, agencies, school, or office. (3/19/93)

a. Dismissal of employees before the expiration of the stated period of appointment or employment or of tenured faculty will be only for good cause shown, as determined by the appropriate administrative officers to whom this responsibility is delegated by the chief executive officer of the institution and who shall make a recommendation to the chief executive officer for such dismissal. The employee shall be suspended with pay until he shall have exercised the opportunity to respond as set forth in Subsection 104.03.a. of this chapter and the recommendation has been acted upon by the chief executive officer. The chief executive officer may for good cause continue the suspension, with pay, pending speedy appellate hearing as hereinafter provided. (7-1-93)

b. The chief executive officer must notify the Board, in writing, of his recommendation for dismissal of an employee, concisely stating the reasons therefor. In arriving at the recommendation, the chief executive officer may utilize whatever advice he may require to ascertain the facts in the case. At the same time he makes the recommendation to the Board, the chief executive officer must notify the employee of the recommendation and proceed in the following manner: (7-1-93)

i. The notice from the chief executive officer must be in writing, and may be personally served upon said employee, or be sent by certified mail, return receipt requested, to the designated address of said employee. The notice must contain a concise statement of the charges against the employee and a statement of the right of the employee to appeal the chief executive officer's recommendation (1) through internal procedures as provided by Subsection 104.03 of this chapter or (2) directly to the Board. Should the employee elect to use the internal grievance procedure, he must notify the chief executive officer, in writing, within fifteen (15) days of receipt of the notice given by the chief executive officer. Should the employee appeal directly to the Board, he must notify the Board, in writing to the Office of the State Board of Education, that he so appeals within thirty (30) days from the date of receipt of the notice given by the chief executive officer. The Board may constitute itself as the hearing tribunal may appoint a hearing committee of not fewer than three (3) of its members or may appoint a single hearing officer not a member of the Board, who must be an attorney duly licensed to practice law in this state and who is not an employee of an institution of higher education. (7-1-93)

ii. If the employee timely exercises his right to appeal, the Board must give reasonable notice of the time, place, and nature of the hearing, and the person or persons before whom the same is to be heard. In every such hearing, the employee will have the right to appear on his own behalf or be represented by any other party who has not formerly participated in the matter on behalf of the Board or any other party and to confront and cross-examine witnesses who may appear against him or her. Failure of the employee to appear at the time and place specified in the notice of hearing constitutes a waiver of further proceedings and the employee may be forthwith terminated by the Board. (7-1-93)

iii. The accused employee has the right to testify in his own behalf, but is not required to do so, and may introduce in his behalf any evidence, oral or documentary, which may be relevant or material to his defense and the issue of whether good cause for dismissal exists. (7-1-93)

iv. With respect to the admissibility of evidence, the hearing tribunal, committee or officer, as the case may be, is governed and controlled by the provisions of Section 67-5210, Idaho Code, or as the same may be hereafter amended. (7-1-93)

v. A stenographic or electronic recording of the proceedings will be taken and filed with the Board, and such record will be made accessible to the employee. (7-1-93)

vi. The institution, agency, school, or office by which the employee is employed has the right to be represented by counsel of its selection at the hearing and is entitled to present witnesses and evidence against the employee. Such counsel has the right to cross-examine the employee (if he testifies on his own behalf). (3-19-93)

vii. The hearing tribunal by a majority of its membership, a hearing committee by a majority of its membership, or a hearing officer, must make written findings on the material facts presented and a recommendation for the continuance or termination of the employee's term of employment, and may make any supplementary suggestions it deems proper concerning the disposal of the case. The original of such findings and the

recommendations, together with any supplementary suggestions, must be delivered to the Board and a copy thereof to the employee. If minority findings, recommendations, or suggestions are made, they must be similarly treated.

(7-1-93)

c. Upon receipt of the findings and recommendations, the Board must, by a majority of the total membership, approve, reject, or amend such findings, recommendations, or suggestions, if any, or may remand the report to the same tribunal for additional evidence in reconsidering its findings, recommendations, or suggestions, if any. Reasons for approval, rejection, or amendment of such findings, recommendations, or suggestions will be stated in writing and communicated to the employee.

(7-1-93)

d. If, under extraordinary circumstances, the Board itself initiates dismissal proceedings against an employee, it must, by majority vote, direct the chief executive officer or any other administrator as may be appropriate to follow procedures for removal of said employee as outlined in Subsection 204.06.b.i. In such case, the Board must appoint a single hearing officer according to criteria stated in Subsection 204.06.b.i.

(7-1-93)

07. **Nontenured Faculty.** Nontenured faculty members who are notified that they will not be reappointed or that the succeeding academic year will be the terminal year of appointment, in accordance with the provisions of Section 202, are not entitled to a statement of the reasons upon which the decision for such action is based. No hearing to review such a decision will be held unless the affected faculty member submits in writing to the Board factual allegations that the decision to terminate was made for legally impermissible reasons, and requests a hearing to review these allegations. Such allegations must be heard under the same procedures as in the case of dismissal for cause, with the following exceptions:

(7-1-93)

a. The burden of proof is upon the affected faculty member to establish at such hearing that the decision in question was based on his exercise of rights guaranteed by the laws or constitution of this state or the United States; and

(7-1-93)

b. The Board need not state the reasons for the questioned decision or offer evidence in support thereof unless the affected faculty member presents a prima facie case in support of his allegations.

(7-1-93)

08. **Award of Tenure.** The awarding of tenure to an eligible faculty member is made only by a positive action of approval by the Board upon the recommendation of the president of the institution. The president must give notice in writing to the faculty member of the Board's approval or denial of tenure status no later than one (1) week following the meeting of the Board at which the action was taken. Notwithstanding any provisions in these policies to the contrary, no person will be deemed to have been awarded tenure because notice is not given or received by the times prescribed in any sections of these policies. No faculty member may construe lack of notice of denial of tenure as the awarding of tenure. If the president has not given notice to the faculty member as provided for in these policies, it is the duty of the faculty member to make inquiry to ascertain the decision of the Board and the president.

(7-1-93)

09. **Dismissal of Administrators.** Dismissal or demotion of administrators, or non-teaching personnel before the expiration of the stated period of appointment or employment will be only for good cause shown, as determined by appropriate administrative officers to whom this responsibility is delegated by the chief administrative officer of the institution and in case of such dismissal or demotion any appeal shall be reviewed by the chief administrative officer of that institution.

(7-1-93)

205. INTERPRETATIONS RELATING TO TENURE.

The prior service in the institution of a nontenured faculty member holding academic rank who has left the institution and is subsequently reappointed after a lapse of not more than three (3) years may be counted toward eligibility for the award of tenure, except that the faculty member may be required to serve additional years before being reviewed for tenure status. Eligibility for the award of tenure must be clarified in writing before reappointment. A tenured faculty member who has left the institution and is subsequently reappointed after a lapse of not more than three (3) years must have tenure status clarified in writing by the president or his designee before appointment. The faculty member may be reappointed with tenure, or may be required to serve additional years before being reviewed for tenure status. Before a nontenured faculty member holding academic rank is moved from one position in the institution to another, the member must be informed in writing by the academic vice president, after consultation with the receiving department, as to the extent to which prior service may count toward eligibility for tenure status. No faculty member's tenure in a discipline may be adversely affected by the reorganization of the administrative

structure. A faculty member's tenure is not affected by reassignment of academic responsibilities. When a tenured faculty member is serving as department chairman, college dean, or in some other administrative or service capacity, retention of membership, academic rank, and tenure in the subject-matter department or similar unit is maintained. Should the administrative or service responsibilities terminate, the member takes up regular duties in the discipline within which membership, academic rank, and tenure was retained. (7-1-93)

206. -- 249. (RESERVED).

250. FINANCIAL EXIGENCY POLICY.

The Board recognizes that in order to discharge its responsibilities for the agencies, institutions, school, office, or department under its governance, it may become necessary to curtail, modify, or eliminate some of the programs of the agencies, institutions, school, office, or department due to unfavorable economic conditions. The Board further recognizes that it must dedicate its resources to the achievement of the purposes and goals of its agencies, institutions, school, office, and department. As used here, "financial exigency" means a demonstrably bona fide, financial crisis which adversely affects an agency, institution, school, office, or department as a whole, or one (1) or more programs, or other distinct units. A state of financial exigency exists only upon Board declaration. (7-1-93)

251. STAFF REDUCTION PROCEDURES.

01. Written Resolution. The Board must take action by written resolution setting forth the basis for its decision to implement a staff reduction, after notice and hearing, at a regular or special meeting of the Board. (7-1-93)

02. Financial Exigency. An employee may be laid off as a result of financial exigency. (7-1-93)

03. Good Faith Requirement. A reduction in force must be done equitably, in good faith, and in a systematic manner directly related to the financial exigency. (7-1-93)

04. Reduction in Force Program. After active consultation with the employees, including faculty, professional staffs, and classified personnel, the chief executive officer of each agency, institution, school, office, or department must prepare and recommend to the Board a program consisting of various alternatives to implement staff reduction procedures. When developing this program, consideration must be given to the necessity and manner of reducing the employment force, the appropriate unit or subunit to be reduced in force, and the criteria for identifying the employees who are to be laid off. The Board must consider and approve a program to implement its decision prior to the effective date of any layoffs. (7-1-93)

05. Advisory Committees. Each of the institutions may establish a committee, which may include representatives of the administration, faculty, staff or students, to advise the chief executive officer on the need for declaring a state of financial exigency and possible remedies therefor. (7-1-93)

252. APPLICATION FOR REDUCTION IN FORCE.

01. Reduction in Force. A reduction in force may occur in the following manner and may be the same or may differ from one agency, institution, school, office, or department to another: (7-1-93)

a. Across an entire agency, institution, school, office, or department, (7-1-93)

b. By subunit within an agency, institution, school, office, or department, such as a college, school, academic department, administrative department, division, office, bureau, discipline, or specialty within a discipline, or (7-1-93)

c. By any combination of a. and b. (7-1-93)

253. (RESERVED).

254. CLASSIFIED EMPLOYEES.

Any reduction in force affecting Board employees subject to the Idaho classified personnel system will be made

pursuant to Rule 14 of the Rules of the Idaho Personnel Commission. The reduction in force will be made by organizational unit. The organizational units of the Board for this purpose are Boise State University, Idaho State University, Lewis-Clark State College, the Office of the State Board of Education, the State Department of Education, the State School for the Deaf and the Blind, the Division of Vocational Education, the Division of Vocational Rehabilitation, Eastern Idaho Technical College, and the Idaho Educational Public Broadcasting System.

(7-1-93)

255. UNIVERSITY OF IDAHO CLASSIFIED EMPLOYEES.

The rules of the Idaho Personnel Commission must be used to differentiate among University of Idaho classified employees within the unit or subunit being reduced in force, provided, however, that employees do not have a right of appeal to the Idaho Personnel Commission.

(7-1-93)

256. STAFF REDUCTION CRITERIA.

In making any staff reduction recommendation to the Board, the chief executive officer must utilize as the first criterion the preservation of the quality and effectiveness of the programs of the agency, institution, school, office, or department. Consequently, those employees who are deemed to be of key importance to the specific program will be retained in preference to other employees, whatever their status. Programs, for the purposes of the subsection, include, but are not limited to, academic, non-instructional, maintenance, administrative, and other support areas. Other criteria that must be considered include but are not limited to tenure, rank, time in rank, length of service, field of specialization, maintenance of necessary programs or services, maintenance of affirmative action programs, and quality of service and work.

(7-1-93)

257. FORM OF NOTICE.

The Board recognizes that any layoff may be a severe economic and personal loss to an employee. Therefore, and within the time frame provided in Section 258 of this chapter, the agency, institution, school, office, or department chief executive officer must give notice in writing to employees who are affected by a reduction in force, which notice must include the effective date of the layoff; a statement of the reasons for the Board's action to declare a financial exigency; the basis, the procedures, and the criteria used to lay off an employee; any opportunity for reconsideration or appeal, including access to appropriate documentation, and the issues that may and may not be considered; and the reinstatement rights of the employee.

(7-1-93)

258. TIME OF NOTICE.

Each agency, institution, school, office, or department must make every effort to give as much notice as is practical in light of the financial exigency to each employee in advance of the effective date of the layoff. Yet, the legislative appropriation process and the subsequent analysis needed before the Board declares a condition of financial exigency and receives, considers, and approves implementing programs may allow little time for official notice of layoff. The active consultation with its employees that the Board requires of each agency, institution, school, office, or department should give to each employee as much actual, informal notice of impending action as is humanly possible under the circumstances. However, the Board is also aware that under some circumstances the decision to declare a condition of financial exigency is based on estimated revenues, rather than on actual revenues. Because of this the Board encourages the longest time of notice possible under the circumstances to any employee who is to be laid off. However, the Board can and does bind each agency, institution, school, office, or department under its governance to the following minimum written notice of layoff:

(7-1-93)

01. General Notice. To all employees, except classified employees, not less than thirty (30) calendar days notice in advance of consideration of a recommendation of layoff by the chief executive officer of the institution to the Board.

(7-1-93)

02. Classified Employees. To employees subject to the Idaho classified personnel system and to University of Idaho classified employees, not less than sixty (60) calendar days before the effective date of the layoff.

(7-1-93)

03. Exempt Contract Employees and Nontenured Faculty. To exempt employees serving under a contract of employment for a fixed term and to nontenured faculty members occupying permanent faculty positions, not less than sixty (60) calendar days before the effective date of the layoff.

(7-1-93)

04. Tenured Faculty. To tenured faculty members occupying permanent faculty positions, a notice of

layoff as stipulated in c. above, with the effective date of layoff being one (1) full semester after the semester in which exigency is declared. An individual institution may, at its option, allow up to a full year's notice. (7-1-93)

05. Pleasure of the Board Employees. To employees serving at the pleasure of the Board, thirty (30) calendar days before the effective date of the layoff. (7-1-93)

259. APPEAL RIGHTS -- CLASSIFIED EMPLOYEES.

A layoff of employees subject to the Idaho classified personnel system and University of Idaho classified employees is a grievable matter, but unless otherwise required by law or regulation, the grievance procedure does not delay the effective date of the layoff. The decision of the chief executive officer of the agency, institution, school, office, or department is final and not appealable to the Board. In the event that such appeal or grievance procedures do not currently exist, each agency, institution, school, office, or department must establish such procedures. (7-1-93)

260. APPEAL RIGHTS -- NONFACULTY EMPLOYEES.

01. Exempt Contract Employees. In most instances, a reduction in force of employees serving under a contract of employment for a fixed term pursuant to Subsection 102.02 of this chapter will be accomplished by nonrenewal of the contract of employment rather than by layoff during the term of employment. Nonrenewal under these circumstances is not appealable at the agency, institution, school, office, or department, nor is it appealable to the Board. In the event an employee serving under a contract of employment for a fixed term is laid off during the term of employment, that employee is entitled to use the appeal procedure of the agency, institution, school, office, or department. For this purpose, each agency, institution, school, office, or department, must establish its own appeal or grievance procedure in the event such procedure does not currently exist. The employee must notify the chief executive officer, in writing, within fifteen (15) days of receipt of the notice of layoff, of his intent to use the internal appeal procedure. The decision of the chief executive officer of the agency, institution, school, office, or department following the appeal procedure is final and not appealable to the Board. Use of the appeal procedure does not delay the effective date of the layoff. (7-1-93)

02. Pleasure of the Board Employees. Notwithstanding the provisions of Subsection 260.01, termination of employees serving at the pleasure of the Board pursuant to Subsection 101.02.a. of this chapter in furtherance of a reduction in force is not appealable. (7-1-93)

261. APPEAL RIGHTS -- TENURED AND NONTENURED FACULTY.

01. Nontenured Faculty. Nontenured faculty members occupying permanent faculty positions who are laid off are entitled to use the appeal procedure of the institution if the procedural requirements of requesting such are met. The decision of the chief executive officer, after reviewing the final written recommendation of the hearing body, is final and not appealable to the Board. If a nontenured faculty member is given notice of nonreappointment pursuant to Section 202 of this chapter in furtherance of a reduction in force, that action is not appealable except as provided in Subsection 202.05. (7-1-93)

02. Tenured Faculty. A tenured faculty member is entitled to use one or the other of the following appeal procedures, but not both: (7-1-93)

a. A tenured faculty member may file a written request of appeal to the chief executive officer of the institution within fifteen (15) calendar days of certified receipt of the notice of intention of the chief executive officer to recommend layoff to the Board. In the written request, the tenured faculty member must set down the grounds upon which the layoff is alleged to be improper and ask for an informal resolution of the issue in advance of final action by the Board. If an informal resolution is not reached, the tenured faculty member may appear before the Board prior to its final action on the chief executive officer's recommendation for a layoff. The appearance before the Board will be informal and is not a contested case. The decision of the Board is final; OR (7-1-93)

b. Following final action of the Board, the tenured faculty member so affected is entitled to use the appeal procedure of the institution if the procedural requirements of requesting such are met. The decision of the chief executive officer, after reviewing the written recommendation of the hearing body, is final and not appealable to the Board. In the event the chief executive officer determines that his recommendation was made in error, a corrective recommendation must be made to the Board. (7-1-93)

262. APPEAL PROCEDURE -- TENURED AND NONTENURED FACULTY.

Faculty members, excluding part-time and temporary faculty, who are recommended for layoff are entitled to a prompt hearing if they request the same in writing within fifteen (15) calendar days of certified receipt of notification. For this purpose, each institution must establish an appeal procedure in the event such procedure does not currently exist. The hearing procedures must ensure a prompt and expeditious hearing that is fair and unbiased, but the procedural requirements of formal adjudication are not required. The final written recommendation of the hearing body must be conveyed to the chief executive officer. Use of the hearing procedure does not delay the effective date of the layoff. (7-1-93)

01. Hearing Standard. The hearing body established must evaluate whether the established and approved procedures were followed and appropriate criteria applied in arriving at the decision to lay off a faculty member. (7-1-93)

02. Limitations Upon Review. The hearing body will not review the Board's decision or the funding distribution among and within the institution(s). (7-1-93)

263. STANDARD OF REVIEW.

The sole basis on which to contest a layoff of employees subject to the Idaho classified personnel system and of University of Idaho classified employees is compliance with the rules of the Idaho Personnel Commission where applicable, and compliance with these rules and the program for reduction in force approved by the Board. The sole basis to contest a layoff of tenured faculty members, nontenured faculty members, and nonfaculty employees serving under a contract of employment for a fixed term is compliance with these rules and the program for reduction in force approved by the Board. The decision of the Board pursuant to Section 100 of this chapter is judgmental or discretionary and is not subject to contest by any employee in any grievance or appeal procedure. (7-1-93)

264. LAYOFF ROSTER FOR CLASSIFIED EMPLOYEES.

An agency, institution, school, office, or department laying off employees subject to the Idaho classified personnel system must prepare and distribute a listing of retention point scores of employees in classes to be affected by a layoff as required by the rules of the Idaho Personnel Commission. The Idaho Personnel Commission will maintain the layoff roster. A classified employee reinstated from a layoff roster will be paid at a pay grade and step consistent with the rules of the Idaho Personnel Commission in effect at the time of reinstatement. (7-1-93)

01. University of Idaho. The University of Idaho will maintain a layoff roster in the event of a layoff of University of Idaho classified employees consistent with the rules of the Idaho Personnel Commission. (7-1-93)

02. Benefits During Layoff. An employee who is laid off may continue to contribute toward and receive the benefits of any state insurance program if the laws, rules, regulations, policies, and procedures governing the administration of such insurance program so permit. (7-1-93)

03. Leave Credit. An employee who has been laid off and who accepts reemployment at an agency, institution, school, office, or department must be credited with any sick leave which the employee had accrued as of the date of layoff, and with any annual leave which the employee had accrued as of the date of layoff and for which the employee has not received payment. (7-1-93)

265. REINSTATEMENT RIGHTS FOR TENURED FACULTY.

In cases of layoff of tenured faculty members occupying permanent faculty positions, the position concerned may not be filled by replacement within a period of three (3) years from the effective date of the layoff unless the tenured faculty member has been offered a return to employment in that position and has not accepted the offer within thirty (30) calendar days after the offer is extended. (7-1-93)

01. Refusal of Reinstatement Offer. If an offer of reinstatement is not accepted, the tenured faculty member's name may be deleted from the reinstatement list, and, if so deleted, the Board has no further obligation to the faculty member. (7-1-93)

02. Benefits During Layoff. A tenured faculty member who is laid off may continue to contribute toward and receive the benefits of any state insurance program if the laws, rules, regulations, policies, and procedures

governing the administration of such insurance program so permit. (7-1-93)

03. Leave Credit. A tenured member of the faculty who has been laid off and who accepts reemployment at the institution will resume tenure and the rank held at the time of layoff, be credited with any sick leave accrued as of the date of layoff, be paid a salary commensurate with the rank and length of previous service, and be credited with any annual leave which the employee has accrued as of the date of layoff and for which the employee has not received payment. (7-1-93)

266. REINSTATEMENT RIGHTS FOR NONTENURED FACULTY AND NONFACULTY EMPLOYEES.

In cases of layoff of nontenured faculty members occupying permanent faculty positions, and nonfaculty employees occupying permanent positions and not subject to the Idaho classified personnel system, the position concerned may not be filled by replacement within a period of one (1) year from the effective date of the layoff unless the employee has been offered a return to employment in that position and the employee has not accepted the offer within thirty (30) calendar days after the offer is extended. (7-1-93)

01. Refusal of Reinstatement Offer. If an offer of reinstatement is not accepted, the employee's name may be deleted from the reinstatement list, and if so deleted, the Board has no further obligation to the employee. (7-1-93)

02. Benefits During Layoff. A nontenured faculty member or a nonfaculty employee who is laid off may continue to contribute toward and receive the benefits of any state insurance program if the laws, rules, regulations, policies, and procedures governing the administration of such insurance program so permit. (7-1-93)

03. Leave Credit -- Nontenured Faculty. A nontenured member of the faculty who has been laid off and who accepts reemployment at the institution will resume the rank held at the time of layoff, be credited with any sick leave accrued as of the date of layoff, be paid a salary commensurate with the rank and length of previous service, and will be credited with any annual leave which the employee had accrued as of the date of layoff and for which the employee has not received payment. (7-1-93)

04. Leave Credit -- Nonfaculty Employee. A nonfaculty employee who has been laid off and who accepts reemployment at the institution will be credited with any sick leave the employee had accrued as of the date of layoff, paid a salary commensurate with the length of previous service, and credited with any annual leave which the employee had accrued as of the date of layoff and for which the employee has not received payment. (7-1-93)

267. BOARD REVIEW.

Notwithstanding the appeal provisions of Sections 259, 260, 261, and 262 of this chapter, an employee may elect to petition the Board to review the final action of the agency, institution, school, office, or department. Any written petition for review must be filed at the Office of the State Board of Education within fifteen (15) calendar days after the employee receives notice of final action under the appeal procedure. The Board may agree to review the final action, setting out whatever procedure and conditions for review it deems appropriate, or it may choose not to review the final action. The fact that a review petition has been filed does not stay the effectiveness of the final action, nor does the grant of a petition for review, unless specifically provided by the Board. Board review is not a matter of right. An employee need not petition for Board review in order to have exhausted administrative remedies for the purposes of judicial review. (7-1-93)

268. -- 999. (RESERVED).