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**IDAPA 08
TITLE 01
Chapter 09**

**08.01.09 - INTELLECTUAL PROPERTY AND CONFLICT OF INTEREST
THE STATE BOARD OF EDUCATION**

000. -- 099. (RESERVED).

100. OBJECTIVES AND PURPOSES.

The State Board of Education, on behalf of the state of Idaho, and the Board of Regents, on behalf of the University of Idaho, (hereinafter collectively referred to as the State Board) recognize the dynamic relationship between research and education in postsecondary institutions. The State Board recognizes that inventions, discoveries, and published works of commercial importance may be the natural outgrowth of research. The State Board intends to promote the use of intellectual properties for the public good. While postsecondary institutions must retain open intellectual inquiry, at times this openness is juxtaposed with the obligations to contribute to the economic growth and development of Idaho and the nation. The following intellectual property policies balance the institutional obligations to preserve open inquiry and realize the commercial value of intellectual property produced by employees of the State's postsecondary educational institutions. (7-1-93)

101. INTELLECTUAL PROPERTY.

01. Patents. (7-1-93)

a. Claim of ownership interest. The State Board of Education, on behalf of the state of Idaho, and the Board of Regents, on behalf of the University of Idaho, claim ownership of any invention or patentable discovery developed under any of the following circumstances: (7-1-93)

i. Arising from any work performed by an employee of the State Board during the course of his duties to the agency or institution; (7-1-93)

ii. Arising from any work performed by an employee of the State Board using state resources not similarly available to members of the general public; or (7-1-93)

iii. Arising from any work performed by an employee of the State Board under contract in a program or project sponsored by a State Board agency or institution or a closely associated research foundation. (7-1-93)

b. Disclaimer of ownership interest. The State Board of Education and the Board of Regents of the University of Idaho claim no ownership interest in any invention or patentable discovery developed by their employees or contractors under the following circumstances: (7-1-93)

i. When the work is performed outside their assigned duties; and (7-1-93)

ii. When the employee/contractor is without benefit of State facilities except those available to members of the general public, such as libraries. (7-1-93)

c. Agency policy review. Agencies and institutions under the governance of the State Board must secure to the state of Idaho their ownership interest in inventions and patentable discoveries. Agency and institutional policies setting out patent administration, including evaluating, financing, assignment, marketing, protection, and the division and use of royalties, as well as amendments thereto, must be submitted to the State Board for its review and approval. (7-1-93)

d. Condition of employment. State Board employees and contractors must, as a condition of employment or contract, agree and adhere to the State Board approved policy on inventions and patentable discoveries. (7-1-93)

02. Copyrights. (7-1-93)

a. When employees or contractors are expressly directed to produce specific work for publication in

the course of their employment, the agency or institution may reserve the right to copyright the publication in the name of the state of Idaho or the University of Idaho or to publish such work without copyright. (7-1-93)

b. Except as noted in Subsection 101.02.a. above, the State Board of Education and the Board of Regents of the University of Idaho claim no ownership interest in works submitted for publication by State Board employees and contractors. Employees and contractors retain the right to copyright and publish their own works. That is, as a general rule, all rights to copyrightable material are the property of the creator. The distribution of royalties, if any, is a matter of arrangement between the creator and his publishers or licensees. However, institutions subject to this rule may elect, by contract or policy, to claim an interest in copyrightable material produced, in whole or part, by their employees or contractors. For example, different treatment may be accorded by an institution in cases of specific contracts providing for an exception, in cases where the constituent institution or sponsor may employ personnel for the purpose of producing a specific work, where different treatment is deemed necessary to reflect the contribution of the institution to the work as in the case of software, mask works for microcircuit chips, or audiovisual material, or where a sponsored agreement requires otherwise. (7-1-93)

03. Intellectual Property Transfer. (7-1-93)

a. The State Board of Education and the Board of Regents of the University of Idaho delegate to Idaho's postsecondary educational institutions the right to transfer and convey ownership in intellectual properties developed within the institutions under the patents and copyright rule. This rule will allow the institutions to play appropriate roles in knowledge transfer and economic growth and development. Under this rule, the institutions may: (7-1-93)

i. Grant rights to owned intellectual properties to research foundations for further development or transfer. (7-1-93)

ii. Themselves act as licensors to convey intellectual property rights to commercial ventures. (7-1-93)

iii. Grant exclusive rights to a licensee. (7-1-93)

iv. Collect and disburse license payments to inventors and their departments and colleges, as well as to their institutions, for the general support of research within the institutions. (7-1-93)

v. Permit institutional employees the right to participate in ownership and governance of companies licensed by the institutions to produce and market the discoveries, provided the conflict of interest rules are followed (see Section 101.04). (7-1-93)

b. Each of Idaho's postsecondary institutions shall, within twelve (12) months of the promulgation of this rule, submit its policy on the transfer of intellectual properties (technology transfer) for State Board review and approval. At a minimum, the policy should include: (7-1-93)

i. The name of the institutional position (or office) with the authority and responsibility for carrying out the policy and binding the institution contractually. (7-1-93)

ii. Policy and plans for patent acquisition (i.e., who initiates, who pays the lawyers, and an enumeration of the duties, responsibilities, and a process for settling debates). (7-1-93)

iii. The range of allowable institutional involvement in the transfer process (i.e., from licensing to acceptance of institutional ownership interests, continued development in institutional facilities for the benefit of the licensee, business planning, or production assistance). (7-1-93)

c. The appropriate officer of each postsecondary institution shall report, two (2) weeks in advance of the State Board meeting, on patent, copyright, and technology transfer activities that have occurred at the institution since the prior meeting of the Board. With respect to patents, that report shall include what public notice was given prior to the licensee(s) being selected. Further, that report will also indicate whether employees of the institution or its respective research foundation have a financial interest in the company to which the intellectual property was transferred. Terms of any license or technology transfer contract will be made available in confidence upon request

for inspection by the State Board. (4-1-94)

04. Conflict-of-Interest Rule. (7-1-93)

a. All decisions of employees of the State Board concerning transfer of intellectual property are to be made solely on the basis of promoting the best interest of Idaho's postsecondary education and the public good. (7-1-93)

b. In the event that an employee of the State Board shall be called upon to consider a transaction involving a postsecondary educational institution under the State Board's governance or an organization with which an employee of the State Board is "affiliated," such employee, as soon as he has knowledge of the transaction, shall: (7-1-93)

i. Disclose fully the precise nature of his interest or involvement in such transaction and/or such organization; and (7-1-93)

ii. Refrain from participation in the institution's consideration of the proposed transaction. (7-1-93)

c. The employees shall also disclose to the institution on a continuing basis all their relationships and business affiliations that reasonably could give rise to a conflict of interest because of their respective duties and responsibilities. (7-1-93)

d. For the purposes of this conflict-of-interest rule, an employee is "affiliated" with an organization if he or a member of his immediate family (i.e., his spouse, parents, children, brothers, and sisters): (7-1-93)

i. Is an officer, director, trustee, partner, employee, or agent of such organization; (7-1-93)

ii. Is either the actual or beneficial owner of more than one percent (1%) of the voting stock or controls interest of such organization; or (7-1-93)

iii. Has any other direct or indirect dealings with such organization from which he knowingly is materially benefited. It shall be presumed that a person is "materially benefited" if he receives, either directly or indirectly, cash or other property (exclusive of dividends and interest) in excess of one hundred dollars (\$100) in any year in the aggregate. (7-1-93)

e. All disclosures required to be made hereunder must be directed, in writing, to the president of the institution, or his designee, who shall have responsibility for administration of this conflict-of-interest rule. The employees shall excuse themselves from any and all potential conflicts of interest. All known violations, disputes, and other issues arising out of the application of this rule to employees of the State Board shall be referred to the State Board for appropriate action. If the State Board determines that a conflict of interest has occurred, it may take action against the employee pursuant to IDAPA 08.01.02, Section 104, "Personnel Rules," Dismissal for Cause. (7-1-93)

f. Each institution shall ensure that all contractors retained to facilitate the transfer of intellectual property conform with this conflict-of-interest rule. (7-1-93)

102. -- 999. (RESERVED).