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Director

Legislative Services Office Idaho State Legislature

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MEMORANDUM

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

FROM: Trevor Ahrens - Legislative Drafter

DATE: August 04, 2022

SUBJECT: Temporary Rule

IDAPA 08.02.03 - Rules Governing Thoroughness - Adoption of Temporary Rule - Docket No.
08-0203-2202

We are forwarding this temporary rule to you for your information only. No analysis was done by LSO. This rule is posted on our web site. If you have any questions, please call Trevor Ahrens at the Legislative Services Office at (208) 334-4845. Thank you.

Attachment: Temporary Rule

Paul Headlee, Deputy Director Kristin Ford, Manager Keith Bybee, Manager April Renfro, Manager Glenn Harris, Manager
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IDAPA 08 – STATE BOARD OF EDUCATION

08.02.03 – RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-2202

NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is June 15, 2022.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant Article IX, Section 2 of the Idaho Constitution and under sections 33-105, 33-116, 33-118, and 33-1612, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

The temporary rule would establish chronic absenteeism as one of the school quality measures used for K-12 school accountability as required by the Elementary Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA) in 2015. Additional language being included would establish the continuation of the student and parent engagement surveys for the 2022-2023 school year while a long term solution is negotiated through the negotiated rulemaking process under a separate proposed rule docket.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

As a result of the Omnibus rulemaking process conducted in 2022 a third school quality measure was rejected by the 2022 legislature without having an alternate measure to replace it. The ESEA as amended requires a third school quality indicator that can be applied consistently across the category of school it is being applied to. This temporary rule will bring Idaho back into compliance with the requirements of ESEA as amended and allow Idaho to use chronic absenteeism as the third school quality measure for the 2022-2023 school year while the negotiated rulemaking process is being conducted for establishing an ongoing solution starting in the 2023-2024 school year in compliance with the law.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: Failure to comply with ESEA as amended requirements could result in the loss of Idaho's federal education funding.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Tracie Bent at tracie.bent@osbe.idaho.gov or (208)332-1582.

DATED this 21st day of April 2022.

Tracie Bent
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State Board of Education
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**THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 08-0203-2202
(Only Those Sections With Amendments Are Shown.)**

111. ASSESSMENT IN THE PUBLIC SCHOOLS.

01. Philosophy. Acquiring the basic skills is essential to realization of full educational, vocational and personal/social development. Since Idaho schools are responsible for instruction in the basic scholastic skills, the State Board of Education has a vested interest in regularly surveying student skill acquisition as an index of the effectiveness of the educational program. This information can best be secured through objective assessment of student growth. The State Board of Education will provide oversight for all components of the comprehensive assessment program. (3-15-22)

02. Purposes. The purpose of assessment in the public schools is to: (3-15-22)

- a.** Measure and improve student achievement; (3-15-22)
- b.** Assist classroom teachers in designing lessons; (3-15-22)
- c.** Identify areas needing intervention and remediation, and acceleration; (3-15-22)
- d.** Assist school districts in evaluating local curriculum and instructional practices in order to make needed curriculum adjustments; (3-15-22)
- e.** Inform parents and guardians of their child's progress; (3-15-22)
- f.** Provide comparative local, state and national data regarding the achievement of students in essential skill areas; (3-15-22)
- g.** Identify performance trends in student achievement across grade levels tested and student growth over time; and (3-15-22)
- h.** Help determine technical assistance/consultation priorities for the State Department of Education. (3-15-22)

03. Content. The comprehensive assessment program will consist of multiple assessments, including, the Idaho Reading Indicator (IRI), the National Assessment of Educational Progress (NAEP), the Idaho English Language Assessment, the Idaho Standards Achievement Tests (ISAT), the Idaho Alternate Assessment, and a college entrance exam. (3-15-22)

04. Testing Population. All students in Idaho public schools, grades kindergarten through twelve (K-12), are required to participate in the comprehensive assessment program approved by the State Board of Education and funded. (3-15-22)

a. All students who are eligible for special education shall participate in the statewide assessment program. (3-15-22)

b. Each student's individualized education program team shall determine whether the student shall participate in the regular assessment without accommodations, the regular assessment with accommodations or adaptations, or whether the student qualifies for and shall participate in the alternate assessment. (3-15-22)

c. Limited English Proficient (LEP) students, as defined in Subsection 112.05.g.iv., may receive designated supports or accommodations, or both, for the ISAT assessment if need has been indicated by the LEP student's Educational Learning Plan (ELP) team. The team shall outline the designated supports or accommodations,

or both, in an ELP prior to the assessment administration. Designated supports or accommodations, or both, shall be familiar to the student during previous instruction and for other assessments. LEP students who are enrolled in their first year of school in the United States may take Idaho's English language assessment in lieu of the English language ISAT, but will still be required to take the ISAT (Mathematics and Science). Such LEP students will be counted as participants for the ninety-five percent (95%) participation target, as described in Subsection 112.05.e. However, such LEP students are not required to be counted for accountability purposes as described in Subsection 112.05.i.

(3-15-22)

05. Scoring and Report Formats. Scores will be provided for each subject area assessed and reported in standard scores, benchmark scores, or holistic scores. Test results will be presented in a class list report of student scores, building/district summaries, content area criterion reports by skill, disaggregated group reports, and pressure sensitive labels as appropriate. Information about the number of students who are eligible for special education who participate in regular and alternate assessments, and their performance results, shall be included in reports to the public if it is statistically sound to do so and would not disclose performance results identifiable to individual students.

(3-15-22)

a. All students taking the Idaho Standards Achievement Test (ISAT) must have a unique student identifier.

(3-15-22)

b. Districts must send all assessment results and related communication to parents within three (3) weeks of receipt from the state.

(3-15-22)

06. Comprehensive Assessment Program. The State approved comprehensive assessment program is outlined in Subsections 111.06.a. through 111.06.n. Each assessment will be comprehensive of and aligned to the Idaho State Content Standards it is intended to assess. In addition, districts are responsible for writing and implementing assessments in those standards not assessed by the state assessment program.

(3-15-22)

a. Kindergarten - Idaho Reading Indicator, Idaho Alternate Assessment, Idaho English Language Assessment.

(3-15-22)

b. Grade 1 - Idaho Reading Indicator, Idaho Alternate Assessment, Idaho English Language Assessment.

(3-15-22)

c. Grade 2 - Idaho Reading Indicator, Idaho Alternate Assessment, Idaho English Language Assessment.

(3-15-22)

d. Grade 3 - Idaho Reading Indicator, Grade 3 Idaho Standards Achievement Tests in English language usage and mathematics, Idaho Alternate Assessment, Idaho English Language Assessment.

(3-15-22)

e. Grade 4 - National Assessment of Educational Progress, Grade 4 Idaho Standards Achievement Tests in English language usage and mathematics, Idaho Alternate Assessment, Idaho English Language Assessment.

(3-15-22)

f. Grade 5 - Grade 5 Idaho Standards Achievement Tests in English language usage, mathematics, and science; Idaho Alternate Assessment; Idaho English Language Assessment.

(3-15-22)

g. Grade 6 - Grade 6 Idaho Standards Achievement Tests in English language usage and mathematics, Idaho Alternate Assessment, Idaho English Language Assessment.

(3-15-22)

h. Grade 7 - Grade 7 Idaho Standards Achievement Tests in English language usage and mathematics, Idaho Alternate Assessment, Idaho English Language Assessment.

(3-15-22)

i. Grade 8 - National Assessment of Educational Progress; Grade 8 Idaho Standards Achievement Tests in English language usage, mathematics, and science; Idaho Alternate Assessment; Idaho English Language Assessment.

(3-15-22)

j. Grade 9 - High School Idaho Standards Achievement Tests (optional at the discretion of the school)

district or charter school), Idaho Alternate Assessment, Idaho English Language Assessment. (3-15-22)

k. Grade 10 - High School Idaho Standards Achievement Tests (optional at the discretion of the school district or charter school), Idaho Alternate Assessment, Idaho English Language Assessment. ~~(3-15-22)~~(6-15-22)T

l. Grade 11 - High School Idaho Standards Achievement Test in English language usage and mathematics, science, Idaho Alternate Assessment, Idaho English Language Assessment, and college entrance exam. (3-15-22)

m. Grade 12 - National Assessment of Educational Progress, Idaho English Language Assessment, and college entrance exam. (3-15-22)

07. Comprehensive Assessment Program Schedule. (3-15-22)

a. The Idaho Standards Achievement Tests will be administered in the Spring in a time period specified by the State Board of Education. (3-15-22)

b. The Idaho Alternate Assessment will be administered in a time period specified by the State Board of Education. (3-15-22)

c. Idaho's English Language Assessment will be administered in a time period specified by the State Board of Education. (3-15-22)

08. Costs Paid by the State. Costs for the following testing activities will be paid by the state: (3-15-22)

a. All consumable and non-consumable materials needed to conduct the prescribed statewide comprehensive assessment program; (3-15-22)

b. Statewide distribution of all assessment materials; and (3-15-22)

c. Processing and scoring student response forms, distribution of prescribed reports for the statewide comprehensive assessment program. (3-15-22)

09. Costs of Additional Services. Costs for any additional administrations or scoring services not included in the prescribed statewide comprehensive assessment program will be paid by the participating school districts. (3-15-22)

10. Test Security, Validity and Reliability. (3-15-22)

a. Test security is of the utmost importance. To ensure integrity of secure test items and protect validity and reliability of test outcomes, test security must be maintained. School districts will employ security measures in protecting statewide assessment materials from compromise. Each individual who has any opportunity to see test items must sign a state-provided confidentiality agreement, which the district must keep on file in the district for at least two (2) years. Documentation of security safeguards must be available for review by authorized state and federal personnel. (3-15-22)

b. Any assessment used for federal reporting shall be independently reviewed for reliability, validity, and alignment with the Idaho Content Standards. (3-15-22)

11. Demographic Information. Accurate demographic information must be submitted as required for each test to assist in interpreting test results. It may include but is not limited to race, sex, ethnicity, and special programs, (Title I, English proficiency, migrant status, special education status, gifted and talented status, and socio-economic status). (3-15-22)

12. Dual Enrollment. For the purpose of non-public school student participation in non-academic

public school activities as outlined in Section 33-203, Idaho Code, the Idaho State Board of Education recognizes the following: (3-15-22)

- a. The Idaho Standards Achievement Tests (grades 3-8 and High School). (3-15-22)
- b. A portfolio demonstrating grade level proficiency in at least five (5) of the subject areas listed in Subsections 111.13.b.i. through 111.13.b.vi. Portfolios are to be judged and confirmed by a committee comprised of at least one (1) teacher from each subject area presented in the portfolio and the building principal at the school where dual enrollment is desired. (3-15-22)
 - i. Language Arts/Communications. (3-15-22)
 - ii. Math. (3-15-22)
 - iii. Science. (3-15-22)
 - iv. Social Studies. (3-15-22)
 - v. Health. (3-15-22)
 - vi. Humanities. (3-15-22)

112. ACCOUNTABILITY.

School district, charter district and public charter school accountability will be based on multiple measures aimed at providing meaningful data showing progress toward interim and long-term goals set by the State Board of Education for student achievement and school improvement. The state accountability framework will be used to meet both state and federal school accountability requirements and will be broken up by school category and include measures of student academic achievement and school quality as determined by the State Board of Education. In addition to those measures identified in the state accountability framework, all school categories will administer an annual satisfaction and engagement survey to parents, students, and teachers. (~~3-15-22~~)(6-15-22)T

01. School Category. (3-15-22)

- a. Kindergarten through grade eight (K-8): Schools in this category include elementary and middle schools as defined in Subsection 112.05.f. (3-15-22)
- b. High Schools, not designated as alternative high schools, as defined in Subsection 112.05.f. (3-15-22)
- c. Alternative High Schools. (3-15-22)

02. Academic Measures by School Category. (3-15-22)

- a. K-8: (3-15-22)
 - i. Idaho Standards Achievement Tests (ISAT) Proficiency. (3-15-22)
 - ii. ISAT growth toward proficiency based on a trajectory model approved by the State Board of Education. (3-15-22)
 - iii. ISAT proficiency gap closure. (3-15-22)
 - iv. Idaho statewide reading assessment proficiency. (3-15-22)
 - v. English Learners achieving English language proficiency. (3-15-22)
 - vi. English Learners achieving English language growth toward proficiency. (3-15-22)

- b. High School: (3-15-22)
 - i. ISAT proficiency. (3-15-22)
 - ii. ISAT proficiency gap closure. (3-15-22)
 - iii. English Learners achieving English language proficiency. (3-15-22)
 - iv. English Learners achieving English language growth toward proficiency. (3-15-22)
 - v. Four (4) year cohort graduation rate, including students who complete graduation requirements prior to the start of the school district or charter schools next fall term. (3-15-22)
 - vi. Five (5) year cohort graduation rate, including students who complete graduation requirements prior to the start of the school district or charter schools next fall term. (3-15-22)
- c. Alternative High School: (3-15-22)
 - i. ISAT proficiency. (3-15-22)
 - ii. English learners achieving English language proficiency. (3-15-22)
 - iii. English learners achieving English language growth towards proficiency. (3-15-22)
 - iv. Four (4) year cohort graduation rate, including students who complete graduation requirements prior to the start of the school district or charter schools next fall term. (3-15-22)
 - v. Five (5) year cohort graduation rate, including students who complete graduation requirements prior to the start of the school district or charter schools next fall term. (3-15-22)
- 03. School Quality Measures by School Category.** (3-15-22)
 - a. K-8: (3-15-22)
 - i. Students in grade 8 enrolled in pre-algebra or higher. (3-15-22)
 - ii. Communication with parents on student achievement (effective starting in the 2018-2019 school year). (3-15-22)
 - iii. Chronic Absenteeism. (6-15-22)T
 - b. High School: (3-15-22)
 - i. College and career readiness determined through a combination of students participating in advanced opportunities, earning industry recognized certification, and/or participation in recognized high school apprenticeship programs. (3-15-22)
 - ii. Students in grade 9 enrolled in algebra I or higher. (3-15-22)
 - iii. Communication with parents on student achievement (effective starting in the 2018-2019 school year). (3-15-22)
 - iv. Chronic Absenteeism. (6-15-22)T
 - c. Alternative High School: (3-15-22)

- i. Credit recovery and accumulation. (3-15-22)
- ii. College and career readiness determined through a combination of students participating in advanced opportunities, earning industry recognized certification, and/or participation in recognized high school apprenticeship programs. (3-15-22)
- iii. State satisfaction and engagement survey administered to parents, students, and teachers ~~(effective starting in the 2018-2019 school year).~~ ~~(3-15-22)~~ (6-15-22)T
- iv. Communication with parents on student achievement (effective starting in the 2018-2019 school year). (3-15-22)

vi. **Chronic Absenteeism.** (6-15-22)T

04. Reporting. Methodologies for reporting measures and determining performance will be set by the State Board of Education. (3-15-22)

05. Annual Measurable Progress Definitions. For purposes of calculating and reporting progress, the following definitions shall be applied. (3-15-22)

a. Annual Measurable Progress. (3-15-22)

i. The State Department of Education will make determinations for schools and districts each year. Results will be given to the districts at least one (1) month prior to the first day of school. (3-15-22)

ii. The State Board of Education will set long-term goals and measurements of interim progress targets toward those goals. The baseline for determining measurable student progress will be set by the State Board of Education and shall identify the amount of growth (percentage of students reaching proficiency) required for each intermediate period. (3-15-22)

b. Full Academic Year (continuous enrollment). (3-15-22)

i. A student who is enrolled continuously in the same public school from the end of the first eight (8) weeks or fifty-six (56) calendar days of the school year through the state approved spring testing administration period, not including the make-up portion of the test window, will be included in the calculation to determine if the school achieved progress in any statewide assessment used for determining proficiency. A student is continuously enrolled if the student has not transferred or dropped-out of the public school. Students who are serving suspensions are still considered to be enrolled students. (3-15-22)

ii. A student who is enrolled continuously in the school district from the first eight (8) weeks or fifty-six (56) calendar days of the school year through the state approved spring testing administration period, not including the make-up portion of the test window, will be included when determining if the school district has achieved AYP. (3-15-22)

iii. A student who is enrolled continuously in a public school within Idaho from the end of the first eight (8) weeks or fifty-six (56) calendar days of the school year through the state approved spring testing administration period, not including the make-up portion of the test window, will be included when determining if the state has achieved progress in any statewide assessment used for determining proficiency. (3-15-22)

c. Participation Rate. (3-15-22)

i. Failure to include ninety-five percent (95%) of all students and ninety-five percent (95%) of students in designated subgroups automatically identifies the school as not having achieved measurable progress in ISAT proficiency. The ninety-five percent (95%) determination is made by dividing the number of students assessed on the Spring ISAT by the number of students reported on the class roster file for the Spring ISAT. (3-15-22)

(1) If a school district does not meet the ninety-five percent (95%) participation target for the current

year, the participation rate can be calculated by the most current three (3) year average of participation. (3-15-22)

(2) Students who are absent for the entire state-approved testing window because of medical reasons or are homebound are exempt from taking the ISAT if such circumstances prohibit them from participating. Students who drop out, withdraw, or are expelled prior to the beginning of the final makeup portion of the test window are considered exited from the school. (3-15-22)

ii. For groups of ten (10) or more students, absences for the state assessment may not exceed five percent (5%) of the current enrollment or two (2) students, whichever is greater. Groups of less than ten (10) students will not have a participation determination. (3-15-22)

d. Schools. As used in this section, schools refers to any school within a school district or charter district and public charter schools. (3-15-22)

i. An elementary school includes a grade configuration of grades Kindergarten (K) through six (6) inclusive, or any combination thereof. (3-15-22)

ii. A middle school is a school that does not meet the definition of an elementary school and contains grade eight (8) but does not contain grade twelve (12). (3-15-22)

iii. A high school is any school that contains grade twelve (12). (3-15-22)

iv. An alternative high school is any school that contains grade twelve (12) and meets the requirements of Section 110 of these rules. (3-15-22)

v. The accountability of public schools without grades assessed by this system (i.e., K-2 schools) will be based on the third grade test scores of the students who previously attended that feeder school. (3-15-22)

vi. A “new school” for purposes of accountability is a wholly new entity receiving annual measurable progress determinations for the first time, or a school with a significant student population change as a result of schools being combined or geographic boundaries changing, or a result of successful school restructuring sanctioned by the Office of the State Board of Education. (3-15-22)

e. Subgroups. Scores on the ISAT must be disaggregated and reported by the following subgroups: (3-15-22)

i. Race/Ethnicity - Black/African American, Asian, Native Hawaiian/Pacific Islander, White, Hispanic/Latino Ethnicity, American Indian/Alaska Native. (3-15-22)

ii. Economically disadvantaged - identified through the free and reduced lunch program. (3-15-22)

iii. Students with disabilities - individuals who are eligible to receive special education services through the Individuals with Disabilities Education Act (IDEA). (3-15-22)

iv. Limited English Proficient - individuals who do not score proficient on the state-approved language proficiency test and meet one (1) of the following criteria: (3-15-22)

(1) Individuals whose native language is a language other than English; or (3-15-22)

(2) Individuals who come from environments where a language other than English is dominant; or (3-15-22)

(3) Individuals who are American Indian and Alaskan natives and who come from environments where a language other than English has had a significant impact on their level of English language proficiency, and who, by reason thereof, have sufficient difficulty speaking, reading, writing, or understanding the English language to deny such individuals the opportunity to learn successfully in classrooms, where the language of instruction is English. (3-15-22)

f. Graduation Rate. The graduation rate will be based on the rate of the cohort of students entering grade nine (9) during the same academic year and attending or exiting the school within a four (4) year or five (5) year period as applicable to the measure being determined. In determining the graduation cohort the school year shall include the students who complete graduation requirements prior to the start of the school district or charter schools next fall term. School districts may only report students as having graduated if the student has met, at a minimum, the state graduation requirements, pursuant to Section 105, and will not be returning to the school in following years to complete required academic course work. The State Board of Education will establish a target for graduation. All high schools must meet the target or make sufficient progress toward the target each year, as determined by the State Board of Education. The graduation rate will be disaggregated by the subgroups listed in Subsection 112.05.g. (3-15-22)

g. Additional Academic Indicator. The State Board of Education will establish a target for all additional academic and school quality measures. All schools must maintain or make progress toward the additional academic and school quality measure target each year. The additional academic and school quality measure targets will be disaggregated by the subpopulations listed in Subsection 112.05.g. (3-15-22)