

Iowa State Board of Education

Executive Summary

January 28, 2021



Agenda Item: Rules: 281 IAC Chapter 4 – Waivers from Administrative Rules (Notice)

State Board Priorities: All

State Board Role/Authority: Iowa Code section 256.7(5) gives the State Board of Education the statutory authority to adopt rules under Chapter 17A.

Presenter(s): Thomas A. Mayes, General Counsel

Attachment(s): One

Recommendation: It is recommended that the State Board give notice of intended action to amend Chapter 4.

Background: This rulemaking modernizes the Department of Education's procedures for rules waivers in light of the revisions to the Administrative Procedure Act made by House File 2389.

EDUCATION DEPARTMENT[281]

Notice of Intended Action

The State Board of Education hereby proposes to amend Chapter 4, “Waivers from Administrative Rules,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 256.7(5).

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, House File 2389.

Purpose and Summary

This rule making modernizes the Department of Education’s procedures for rules waivers in light of the revisions to the Administrative Procedure Act made by House File 2389.

Fiscal Impact

This rule making has no fiscal impact to the state of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department of Education for a waiver of the discretionary provisions, if any, pursuant to Chapter 281—4.

Public Comment

Any interested person may submit comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department of Education no later than 4:30 p.m. on March 16, 2021. Comments should be directed to: Thomas

A. Mayes, General Counsel and Administrative Rules Coordinator, Grimes State Office Building, Second Floor; 400 E. 14th Street; Des Moines, IA 50319-0416. Phone: 515-281-8661. Fax: 515-242-5988.

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

March 16, 2021

9:30 to 10:00 a.m.

Grimes State Office Building, Room B100

400 E. 14th Street

Des Moines, IA 50319-0146

Also via video conference at the following link:

<https://idoe.zoom.us/j/98069592361?pwd=VHRHQXIUOXF6ZnV4YjJ4Q2dwSzBVZz09>

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Education and advise of specific needs by calling 515-281-5294.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special

meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action proposed:

Item 1. Amend the Chapter's title as follows.

CHAPTER 4
WAIVERS ~~OR VARIANCES~~ FROM ADMINISTRATIVE RULES

Item 2. Amend rule 281—4.1(17A,ExecOrd11), as follows.

281—4.1(17A,ExecOrd11) Definitions. For purposes of this chapter:

“Board” means the state board of education.

“Department” means the department of education.

“Director” means the director of the department of education.

“Person” means an individual, school corporation, government or governmental subdivision or agency, nonpublic school, partnership or association, or any legal entity.

“Waiver ~~or variance~~” means action by the director which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. ~~For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”~~

Item 3. Amend rule 281—4.6(17A,ExecOrd11), as follows.

281—4.6(17A,ExecOrd11) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the person for whom a waiver is being requested, and the case number of any related contested case.

2. A description and citation of the specific rule from which a waiver is requested.

3. The specific waiver ~~or variance~~ requested, including the precise scope and duration.
4. The relevant facts that the petitioner believes would justify a waiver under each of the five criteria described in rule 281—4.4(17A,ExecOrd11). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.
5. A history of any prior contacts between the board, the department and the petitioner relating to the regulated activity, license, or grant affected by the proposed waiver, including a description of each affected item held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, or grant within the last five years.
6. A detailed statement of the impact on student achievement for any person affected by the granting of a waiver.
7. Any information known to the requester regarding the board's or department's treatment of similar cases.
8. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.
9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.
10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver.

Item 4. Amend rule 281—4.11(17A,ExecOrd11), as follows.

281—4.11(17A,ExecOrd11) Public availability. All orders granting or denying a waiver petition shall be indexed, filed and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under

Iowa Code chapter 22. The director may accordingly redact confidential information from petitions or orders prior to public inspection. The administrative code editor and the administrative rules coordinator shall devise an internet site to identify rules for which a petition for a waiver has been granted or denied and make this information available to the public.

Item 5. Amend rule 281—4.12(17A,ExecOrd11), as follows.

281—4.12(17A,ExecOrd11) Summary reports. ~~Semiannually, the~~ When the department grants or denies a waiver, the department shall submit the information required by this rule on the internet site referred to in rule 281—4.11 within sixty days. ~~prepare a summary report identifying~~ The internet site shall identify the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the ~~board's~~ department's actions on waiver requests. If practicable, the report shall ~~detail~~ include information detailing the extent to which the granting of a waiver has established a precedent for additional waivers and has affected the general applicability of the rule itself. ~~Copies of the report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.~~