

Iowa State Board of Education

Executive Summary

June 20, 2024



Agenda Item: Rules: 281 IAC Chapter 12 – “General Accreditation Standards” (Adopt)

State Board Priority: Eliminating Achievement and Opportunity Gaps

State Board Role/Authority: This rule making is adopted under the authority provided in Iowa Code sections 256.7(5) and 2023 Iowa Acts, Senate File 496.

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

Attachment(s): One

Recommendation: It is recommended that the State Board amend Chapter 12.

Background: This rulemaking addresses items required by Senate File 496. This rulemaking does not adopt any provision enjoined by the federal court. Such items are struck through in the attachment, and no discussion will be made of any public comment about the enjoined provisions.

Concerning the provisions not enjoined, the Department considered public comment, as discussed in the preamble in the attachment. The commenters’ proposed changes are not adopted because the changes are either beyond the State Board’s statutory authority or the commenters’ concerns are sufficiently addressed in the proposed rules’ text.

EDUCATION DEPARTMENT[281]

Adopted and Filed

The State Board of Education hereby amends Chapter 12, “General Accreditation Standards,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 256.7(5).

State or Federal Law Implemented

This rulemaking implements, in whole or in part, 2023 Iowa Acts, Senate File 496.

Purpose and Summary

This rulemaking implements portions of 2023 Iowa Acts, Senate File 496. A portion of that legislation is currently enjoined by a federal court. Consistent with that injunction, neither the Department nor the State Board will take any action in furtherance of those enjoined provisions.

The items from Senate File 496 that are not enjoined include age-appropriate instruction; a requirement for online availability of library catalogs; and provisions concerning parental rights for accurate information regarding their children’s gender identity.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 13, 2023, as **ARC 7169C**.

Two public hearings were held: one on January 3, 2024, at 2:30 p.m. in the State Board Room, Second Floor, Grimes State Office Building, Des Moines; and one on January 4, 2024, at 10:30 a.m., in the ICN Classroom (relocated from the State Board Room due to technical issues), Second Floor, Grimes State Office Building, Des Moines. A combined 30 people attended the

two public hearings, with 9 individuals making public comment. The Department received 83 written comments.

Consistent with the federal court’s injunction, the Department will not analyze or discuss any comment concerning the currently enjoined provisions of Senate File 496.

Two organizations submitted comment asking for additional modifiers to be added to the definition of age-appropriate. The organizations proposed the following text: “*Age-appropriate* does not include any material with vivid or pornographic descriptions or graphic depictions of a sex act.” The organizations assert that this is consistent with legislative intent, and would allow schools to use “classic pieces of literature and other books that mention a sex act, but do not vividly describe it” in instruction. The definition is established by statute, and the sentence following the quoted language in Item 4 addresses the organizations’ concerns.

The two organizations also requested that the investigation process for violations of the parental rights provisions in Item 6 be modified by requiring complainants to “follow local processes first” and requiring “timely” notification of “licensed staff who are under investigation about the complaint, providing an opportunity to remedy voluntarily and permanently” any violations. Concerning local processes, the Department is unable to add a required step to the complaint process. Concerning notification of staff members whose alleged conduct is subject of an investigation, the rules need not include this requirement because it is an assumed part of any investigation and a required due process protection.

One organization objected to the requirement that online catalogues be updated a minimum of twice per year, asserting that this is inconsistent with the waiver process made available in Senate File 496. The governing statutory text is incorporated in Item 13 by reference, including the waiver provision. Item 4 is not inconsistent with Senate 496; rather, it provides clarity and

flexibility to districts. When a district, whether it received a waiver or not, is required to post its catalogue online, it must update its catalogue at least twice per year if it does not do so in real time.

Adoption of Rulemaking

This rulemaking was adopted by the State Board on June 20, 2024.

Fiscal Impact

There is an unknown fiscal impact to the Iowa Department of Education. The estimated fiscal impact for districts was set out in the Fiscal Note prepared for Senate File 496, available at www.legis.iowa.gov/docs/publications/FN/1370427.pdf.

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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).

Effective Date

This rulemaking will become effective on August 28, 2024.

The following rulemaking action is adopted:

ITEM 1. Strike “multicultural and gender fair” wherever it appears in **281—Chapter 12** and

insert “age-appropriate, multicultural, and gender fair” in lieu thereof.

ITEM 2. Strike “Multicultural and gender fair” wherever it appears in **281—Chapter 12** and insert “Age-appropriate, multicultural, and gender fair” in lieu thereof:

ITEM 3. Strike “multicultural, gender fair” wherever it appears in **281—Chapter 12** and insert “age-appropriate, multicultural, and gender fair” in lieu thereof:

ITEM 4. Adopt the following **new** definitions of “Age-appropriate” and “Sex act” in rule **281—12.2(256)**:

“*Age-appropriate*,” with the exception of the human growth and development, means topics, messages, and teaching methods suitable to particular ages or age groups of children and adolescents, based on developing cognitive, emotional, and behavioral capacity typical for the age or age group. “Age-appropriate” does not include any material with descriptions or visual depictions of a sex act. A reference or mention of a sex act in a way that does not describe or visually depict a sex act as defined in these rules is not included in the previous sentence. For purposes of human growth and development instruction required by Iowa Code section 279.50, “age-appropriate” means topics, messages, and teaching methods suitable to particular ages or age groups of children and adolescents, based on developing cognitive, emotional, and behavioral capacity typical for the age or age group.

“*Sex act*” means any sexual contact between two or more persons by any of the following:

1. Penetration of the penis into the vagina or anus.
2. Contact between the mouth and genitalia or mouth and anus or by contact between the genitalia of one person and the genitalia or anus of another person.
3. Contact between the finger, hand, or other body part of one person and the genitalia or anus of another person, except in the course of examination or treatment by a person licensed pursuant

to Iowa Code chapters 148, 148C, 151, or 152.

4. Ejaculation onto the person of another.
5. Use of artificial sexual organs or substitutes therefore in contact with the genitalia or anus.
6. The touching of a person's own genitals or anus with a finger, hand, or artificial sexual organ or other similar device at the direction of another person.

ITEM 5. Adopt the following new paragraph **12.3(12)“d”**:

d. General. Each school district shall establish a kindergarten through grade 12 library program that is consistent with Iowa Code section 280.6 and with the educational standards established in this chapter, ~~contains only age appropriate materials,~~ and supports the student achievement goals of the total school curriculum.

~~—(1) If, after investigation, the department determines that a school district or an employee of a school district has violated the provisions of this paragraph related to library programs containing only age appropriate materials, beginning January 1, 2024, the school district or employee of the school district, as applicable, shall be subject to the following:~~

~~—1. For the first violation of this paragraph, the department shall issue a written warning to the board of directors of the school district or the employee, as applicable.~~

~~—2. For a second or subsequent violation of this paragraph, if the department finds that a school district knowingly violated this paragraph, the superintendent of the school district shall be subject to a hearing conducted by the board of educational examiners, which may result in disciplinary action.~~

~~—3. For a second or subsequent violation of this paragraph, if the department finds that an employee of the school district who holds a license, certificate, authorization, or statement of recognition issued by the board of educational examiners knowingly violated this paragraph, the~~

~~employee shall be subject to a hearing conducted by the board of educational examiners, which may result in disciplinary action.~~

~~—(2) This paragraph relates solely to library programs operated by the district, which means library programs over which the district exercises administrative control.~~

~~—(3) Concerning enforcement provisions relating to library books containing only age-appropriate materials, the department may exercise enforcement discretion if any violation is voluntarily and permanently corrected prior to the department making a determination of a violation.~~

~~—(4) For library collections that serve multiple grade ranges, the district will exercise reasonable physical, administrative, and technological controls to ensure that students have access to age-appropriate materials based on the students' age and grade.~~

~~—(5) In complying with the requirements in Iowa Code section 279.77(3) as enacted by 2023 Iowa Acts, Senate File 496, section 13, the district, if it does not make available a comprehensive list of all books available to all students in libraries offered by the district on its website in real time, must post an updated list at least two times per calendar year.~~

ITEM 6. Adopt the following **new** subrules 12.3(15) and 12.3(16):

12.3(15) *Compliance with Iowa Code section 279.80.*

~~—a. A school district shall not provide any program, curriculum, test, survey, questionnaire, promotion, or instruction relating to gender identity or sexual orientation to students in kindergarten through grade six.~~

~~—b. “Gender identity” and “sexual orientation” have the meanings given in Iowa Code section 216.2.~~

~~—c. In monitoring and enforcing this subrule, the department will not conclude that a neutral~~

~~statement regarding sexual orientation or gender identity violates Iowa Code section 279.80 as enacted by 2023 Iowa Acts, Senate File 496, or this subrule.~~

~~—12.3(16) Parental rights in education.~~

a. A school district shall not knowingly give false or misleading information to the parent or guardian of a student regarding the student's gender identity or intention to transition to a gender that is different than the sex listed on a student's official birth certificate or certificate issued upon adoption if the certificate was issued at or near the time of the student's birth.

b. If a student enrolled in a school district requests an accommodation that is intended to affirm the student's gender identity from a licensed practitioner employed by the school district, including a request that the licensed practitioner address the student using a name or pronoun that is different than the name or pronoun assigned to the student in the school district's registration forms or records, the licensed practitioner shall report the student's request to an administrator employed by the school district, and the administrator shall report the student's request to the student's parent or guardian. Concerning a student's request to use a name that is different from the name on the student's registration forms or records, that request is governed by this subrule only if the request is an accommodation intended to affirm a student's gender identity.

c. If, after investigation, the department determines that a school district or an employee of a school district has violated this subrule, the school district or employee of the school district, as applicable, shall be subject to the following:

(1) For the first violation of this subrule, the department shall issue a written warning to the board of directors of the school district or the employee, as applicable.

(2) For a second or subsequent violation of this subrule, if the department finds that a school district knowingly violated this subrule, the superintendent of the school district shall be subject

to a hearing conducted by the board of educational examiners, which may result in disciplinary action.

(3) For a second or subsequent violation of this subrule, if the department finds that an employee of the school district who holds a license, certificate, authorization, or statement of recognition issued by the board of educational examiners knowingly violated this subrule, the employee shall be subject to a hearing conducted by the board of educational examiners, which may result in disciplinary action.

d. Concerning enforcement of this subrule, the department may exercise enforcement discretion if any violation is voluntarily and permanently corrected prior to the department making a determination of a violation.