

Red Tape Review Rule Report (Due: September 1, 2024)

Department Name:	Iowa Board of Educational Examiners	Date:	07/08/2024	Total Rule Count:	16
IAC #:	282	Chapter/ SubChapter/ Rule(s):	Chapter 6	Iowa Code Section Authorizing Rule:	17A
Contact Name:	Joanne Tubbs	Email:	Joanne.tubbs@iowa.gov	Phone:	515 281 3611

PLEASE NOTE, THE BOXES BELOW WILL EXPAND AS YOU TYPE

What is the intended benefit of the rule?

This rule is intended to explain the rules waiver process to constituents

Is the benefit being achieved? Please provide evidence.

Yes – the Board receives requests for waivers.

What are the costs incurred by the public to comply with the rule?

No costs.

What are the costs to the agency or any other agency to implement/enforce the rule?

Costs are very minimal (some staff time to prepare the waiver).

Do the costs justify the benefits achieved? Please explain.

Yes – the board receives requests for waivers.

Are there less restrictive alternatives to accomplish the benefit? YES NO

If YES, please list alternative(s) and provide analysis of less restrictive alternatives from other states, if applicable. If NO, please explain.

This is a statutorily required procedure. The Board has sought to simplify the rules text, as noted below.

Does this chapter/rule(s) contain language that is obsolete, outdated, inconsistent, redundant, or unnecessary language, including instances where rule language is duplicative of statutory language? [list chapter/rule number(s) that fall under any of the above categories]

PLEASE NOTE, THE BOXES BELOW WILL EXPAND AS YOU TYPE

Several rules contain redundant language which has been removed.

RULES PROPOSED FOR REPEAL (list rule number[s]):

6.1 through 6.16

RULES PROPOSED FOR RE-PROMULGATION (list rule number[s] or include rule text if available):

CHAPTER 6
WAIVERS FROM ADMINISTRATIVE RULES

282—6.1(17A) Definition. For purposes of this chapter:

“*Board*” means the board of educational examiners.

“*Waiver*” means the same as defined in Iowa Code section 17A.9A(5).

282—6.2(17A) General. The board may grant a waiver of any administrative rule, if the waiver is consistent with Iowa Code section 17A.9A.

282—6.3(17A) Criteria for waiver. In response to a petition filed pursuant to this chapter, the board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the board finds, based on clear and convincing evidence, all of the factors listed in Iowa Code section 17A.9A(2).

282—6.4(17A) Filing of petition. A petition for a waiver will be submitted to the board as follows:

6.4(1) License, certificate, or authorization application. If the petition relates to an application, the petition is made in accordance with the filing requirements for the application in question.

6.4(2) Contested cases. If the petition relates to a pending contested case, the petition is filed in the contested case proceeding, using the caption of the contested case.

6.5(3) Other. If the petition does not relate to a license application or a pending contested case, the petition may be submitted to the board’s executive director.

282—6.5(17A) Content of petition. A petition for waiver includes the following information where applicable and known to the requester:

1. The name, address, and telephone number of the person or entity 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 requested, including the precise scope and duration.
4. The relevant facts that the petitioner believes would justify a waiver under the criteria described in Iowa Code section 17A.9A(2). This statement includes 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 and the petitioner relating to the regulated activity, license, or authorization affected by the proposed waiver, including a description of each affected license or authorization held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity or license within the last five years.
6. Any information known to the requester regarding the board’s treatment of similar cases.

7. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the grant of a waiver.

8. The name, address, and telephone number of any person or entity that would be adversely affected by the grant 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 board with information relevant to the waiver.

282—6.6(17A) Additional information. Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the board's executive director, a committee of the board, or a quorum of the board.

282—6.7(17A) Notice. The board will acknowledge a petition upon receipt and ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is necessary by any provision of law. In addition, the board may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law, and provide a written statement to the board attesting that notice has been provided.

282—6.8(17A) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings apply in three situations: (1) to any petition for a waiver filed within a contested case, (2) when provided by rule or order, or (3) when required to do so by statute.

282—6.9(17A) Ruling. An order granting or denying a waiver will be in writing and will contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of any waiver issued.

6.9(1) General. The final decision on whether the circumstances justify the granting of a waiver is in the sole discretion of the board, based on the unique, individual circumstances set out in the petition.

6.9(2) Compliance with Iowa Code standards. The board applies the standards and burdens in Iowa Code section 17A.9A(3).

6.9(3) Administrative deadlines. When the rule from which a waiver is sought establishes administrative deadlines, the board will balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

6.9(4) Time for ruling. The board will grant or deny a petition for a waiver as soon as practicable but, in any event, within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board will grant or deny the petition no later than the time at which the final decision in that contested case is issued. Failure of the board to grant or deny a petition within the required time period is deemed a denial of that petition by the board. However, the board remains responsible for issuing an order denying a waiver.

6.9(5) Service of order. Within seven days of its issuance, any order issued under this chapter is transmitted to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law.

282—6.10(17A) Public availability. The board will comply with the public availability and filing procedures of Iowa Code section 17A.9A(4).

281—6.11(17A) After issuance of a waiver.

6.11(1) Cancellation. A waiver issued pursuant to this chapter may be withdrawn, canceled or modified if, after appropriate notice and hearing, the board issues an order finding any of the following:

a. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or

b. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or

c. The subject of the waiver order has failed to comply with all conditions contained in the order.

6.11(2) Violations. A violation of conditions in the waiver approval is the equivalent of violation of the particular rule for which the waiver is granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

6.11(3) Defense. After the board issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

6.11(4) Judicial review. Judicial review of the board's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

These rules are intended to implement Iowa Code chapter 17A.

***For rules being re-promulgated with changes, you may attach a document with suggested changes.**

METRICS

Total number of rules repealed:	5
Proposed word count reduction after repeal and/or re-promulgation	613
Proposed number of restrictive terms eliminated after repeal and/or re-promulgation	28

ARE THERE ANY STATUTORY CHANGES YOU WOULD RECOMMEND INCLUDING CODIFYING ANY RULES?

None