

Red Tape Review Rule Report (Due: September 1, 2023)

Department Name:	Education	Date:	May 30, 2023	Total Rule Count:	23
IAC #:	281	Chapter/ SubChapter/ Rule(s):	6	Iowa Code Section Authorizing Rule:	17A.9A
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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 contested case hearing process to constituents.

Is the benefit being achieved? Please provide evidence.

Unclear. The Department and State Board have transitioned from having in-house administrative law judges to ALJs employed by DIA. This transition will allow for some simplification.

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

There are some unquantifiable costs associated with duplication and with a procedure containing obsolete rules.

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

There are some unquantifiable costs associated with duplication and with a procedure containing obsolete rules.

Do the costs justify the benefits achieved? Please explain.

Unclear, because of the small number of waiver requests the Department receives.

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 Department 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Does this chapter/rule(s) contain language that is obsolete, outdated, inconsistent, redundant, or unnecessary language, including instances where rule language is duplicative of statutory language?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]

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Several of the rules recite statutory text, recite text from the uniform rules on contested cases, or are obsolete.

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

The entire chapter. This is a strike-and-replace.

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

The chapter contains six proposed rules, which incorporate the uniform rules by reference (see attached).

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

METRICS

Total number of rules repealed:	17 (net)
Proposed word count reduction after repeal and/or re-promulgation	5649
Proposed number of restrictive terms eliminated after repeal and/or re-promulgation	161

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

Iowa Code section 256.9 requires the State Board to review all proposed decisions under Iowa Code chapter 290 (see Iowa Code § 256.9(6)), even if no party objects to or appeals the proposed decision. This is out of alignment with nearly every other agency's contested case procedures. The draft rules attempt to address this inefficiency through the use of the State Board's consent agenda; however, the underlying statute may benefit from examination.

CHAPTER 6
APPEAL PROCEDURES

281—6.1(290) Scope of chapter. This chapter applies to all hearing requests seeking appellate review by the state board of education, the director of education, or the department of education.

281—6.2(256,290,17A) Definitions. The definitions contained in rule X.2 of the Uniform Rules on Agency Procedures for Contested Cases, effective on July 1, 1999, are incorporated by this reference. The following additional definitions apply to this chapter.

“*Appellant*,” as used in this chapter, refers to a party bringing an appeal to the state board of education, the director of education or the department of education.

“*Appellee*,” as used in this chapter, refers to the party in a matter against whom an appeal is taken, or the party whose interest is adverse to the reversal of a prior decision now on appeal to the state board of education, the director of education, or the department of education.

“*Board*,” as used in this chapter, means the state board of education.

“*Department*” means the department of education.

“*Designated office*” means the Iowa Department of Education, Grimes State Office Building, 400 E. 14th Street, Des Moines, IA 50319, or as ordered by the presiding officer

“*Director*,” as used in this chapter, refers to the director of education.

“*Presiding officer*” means the director of the department of education or the designated administrative law judge.

281—6.3(290,17A) Incorporation by reference. The following rules from the Uniform Rules on Agency Procedures for contested cases, effective on July 1, 1999, are incorporated by this reference.

1. X.7(17A) Waiver of procedures.
2. X.9(17A) Disqualification.
3. X.10(17A) Consolidation – severance.
4. X.12(17A) Service and filing of pleadings and other papers.
5. X.13(17A) Discovery.
6. X.14(17A) Subpoenas, with the following addition. Witnesses and serving officers may be allowed the same compensation as is paid for like attendance or service in district court. The witness’s fees and mileage are considered costs of any appeal filed under Iowa Code chapter 290, and costs are assigned to the nonprevailing party. The witness’s fees and expenses for hearings brought under other statutes and rules are the responsibility of the party requesting or subpoenaing the witness.
7. X.15(17A) Motions.
8. X.16(17A) Prehearing conferences.
9. X.17(17A) Continuances.
10. X.19(17A) Intervention.
11. X.20(17A) Hearing procedures.
12. X.21(17A) Evidence.
13. X.22(17A) Default, with the following correction. The reference to rule of civil procedure 236 is corrected to rule 1.977.
14. X.23(17A) Ex parte communication.
15. X.24(17A) Recording costs.

16. X.28(17A) Applications for rehearing.
17. X.29(17A) Stays of agency action.
18. X.30(17A) No factual dispute contested cases.
19. X.31(17A) Emergency adjudicative proceedings.

281—6.4(290,17A) Manner of appeal.

6.3(1) An appeal under this chapter is started by filing an affidavit, unless an affidavit is not required by the statute establishing the right of appeal. The affidavit is to set forth the facts, any error complained of, or the reasons for the appeal in a plain and concise manner, and be signed by the appellant. The affidavit is to be delivered to the office of the director by United States Postal Service, facsimile (fax), electronic mail, or personal service. The affidavit is considered filed with the agency on the date of the United States Postal Service postmark, the date of arrival of the facsimile, the date of arrival of the electronic mail message, or the date personal service is made. Time will be computed as provided in Iowa Code subsection 4.1(34).

6.3(2) The director or designee, within five days after the filing of such affidavit, notifies the proper officer in writing of the taking of an appeal. The officer, within ten days, files with the board a complete certified transcript of the record and proceedings related to the decision appealed. A certified copy of the minutes of the meeting of the governmental body making the decision appealed satisfies this requirement.

6.3(3) The director or designee shall send written notice by certified mail, return receipt requested, at least ten days prior to the hearing, unless the ten-day period is waived by all parties, to all persons known to be interested. Such notice includes the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing is to be held; a reference to the particular sections of the statutes and rules involved; and a short and plain statement of the matters asserted. A copy of the appeal hearing rules shall be included with the notice.

The notice of hearing contains the following information: identification of all parties including the name, address and telephone number of the person who will act as advocate for the agency or the state and of parties' counsel where known; reference to the procedural rules governing conduct of the contested case proceeding; reference to the procedural rules governing informal settlement; and identification of the presiding officer, if known (if not known, a description of who will serve as presiding officer (e.g., director of the department or administrative law judge from the department of inspections and appeals)).

6.3(4) An amendment to the affidavit of appeal may be made by the appellant up to ten working days prior to the hearing. With the agreement of all parties, an amendment may be made until the hearing is closed to the receipt of evidence.

281—6.4(17A) Record. The record of a contested case or appeal is defined in Iowa Code section 17A.12, subsection 6.

281—6.5(290,17A) Decision and appeal.

6.5(1) The presiding officer, after due consideration of the record and the arguments presented, makes a decision on the appeal. The proposed decision will be mailed to the parties or their representatives by regular mail. The parties may elect to receive the proposed decision by other means, such as electronic mail or electronic filing.

6.5(2) The decision shall be based on the laws of the United States, the state of Iowa and the regulations and policies of the department of education and in the best interest of education.

6.5(3) A proposed decision of the presiding officer, if there is no appeal under rule subrule 6.5(4), shall be placed on the consent agenda of the next regular board meeting for summary adoption, unless the decision is within the province of the director to make.

6.5(4) Any adversely affected party may appeal a proposed decision to the state board within 20 days after issuance of the proposed decision, by filing a notice of appeal with the office of the director. The notice of appeal must be signed by the appealing party or a representative of that party, contain a certificate of service (or other evidence of service), and specify:

- a. The names and addresses of the parties initiating the appeal;
- b. The proposed decision to be appealed;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision;
- d. The relief sought; and
- e. The grounds for relief.

6.5(5) Unless otherwise ordered, within 15 days of a party's filing of the notice of appeal, each appealing party may file exceptions and briefs. Within 10 days after the filing of exceptions and briefs by the appealing party, any party may file a responsive brief. Briefs shall cite any applicable legal authority, specify relevant portions of the record in the proceeding below, and be limited to a maximum length of 25 pages. An opportunity for oral arguments may be given with the consent of the board. To be granted oral argument, a party must file a request to present oral arguments with the party's briefs. With or without oral argument, the appeal of the proposed decision will be placed on the next regular board agenda.

6.5(6) The board may affirm, modify, or vacate the decision, or may direct a rehearing before the director or the director's designee.

6.5(7) Copies of the final decision shall be sent to the parties or their representatives by regular mail within five days after state board action, if required, on the proposed decision.

6.5(8) No individual who participates in the making of any decision shall have advocated in connection with the hearing, the specific controversy underlying the case, or other pending factually related matters. Nor shall any individual who participates in the making of any proposed decision be subject to the authority, direction, or discretion of any person who has advocated in connection with the hearing, the specific controversy underlying the hearing, or a pending related matter involving the same parties.

281—6.6(256,17A) Additional requirements for specific programs.

6.6(1) General rule. If a specific federal program's statutes or regulations impose requirements on appeals to the state board of education, the director of education, or the department of education, those specific requirements govern and are incorporated by this reference.

6.6(2) Specific programs. The following is a nonexhaustive list to which this rule applies.

a. Appeals under the Child and Adult Care Food Program (CACFP) are governed by the requirements contained in 7 CFR Section 226.6 as of May 1, 2023.

b. Due process complaints under Part B of the Individuals with Disabilities Education Act and Iowa Code chapter 256B are governed by Iowa Administrative Code 281—Chapter 41.

c. Due process complaints under Part C of the Individuals with Disabilities Education Act are governed by Iowa Administrative Code 281—Chapter 120.

These rules are intended to implement Iowa Code sections 256.7(6) and 256.9(17), and Iowa Code chapters 17.A and 290.