

# Iowa State Board of Education

## Executive Summary

November 15, 2023



**Agenda Item:** Rules: 281 IAC Chapter 12 – “General Accreditation Standards” (Notice of Intended Action)

**State Board Priority:** Eliminating Achievement and Opportunity Gaps

**State Board Role/Authority:** This rule making is proposed 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 give notice of its intent to amend Chapter 12.

**Background:** This proposed rulemaking addresses items required by Senate File 496. These deal with age-appropriate instruction; requirements for library programs, including library materials and online availability of library catalogs; compliance with newly adopted section 279.80 (related to the provision of any “program, curriculum, test, survey, questionnaire, promotion, or instruction relating to gender identity or sexual orientation to students in kindergarten through grade six”); and provisions with parental rights for accurate information regarding their children’s gender identity. The proposed rulemaking contains new enforcement mechanisms in addition to those currently existing under chapter 12. Those new enforcement mechanisms are required by Senate File 496.

## **EDUCATION DEPARTMENT[281]**

### **Notice of Intended Action**

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

#### *Legal Authority for Rule Making*

This rulemaking is proposed 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, House File 496.

#### *Purpose and Summary*

This proposed rulemaking addresses items required by Senate File 496. These deal with age-appropriate instruction; requirements for library programs, including library materials and online availability of library catalogs; compliance with newly adopted section 279.80 (related to the provision of any “program, curriculum, test, survey, questionnaire, promotion, or instruction relating to gender identity or sexual orientation to students in kindergarten through grade six”); and provisions with parental rights for accurate information regarding their children’s gender identity.

The proposed rulemaking contains new enforcement mechanisms in addition to those currently existing under chapter 12. Those new enforcement mechanisms are required by Senate File 496.

#### *Fiscal Impact*

This rule making has a fiscal impact to the state of Iowa. There is an unknown fiscal impact to the Iowa Department of Education. Estimated fiscal impact for districts was set out in the fiscal

note prepared for Senate File 496, available at <https://www.legis.iowa.gov/docs/publications/FN/1370427.pdf>.

*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 State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

*Public Comment*

Any interested person may submit comments concerning this proposed rulemaking. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on January 4, 2024. Comments should be directed to:

Thomas A. Mayes  
Iowa Department of Education  
Grimes State Office Building  
400 E. 14<sup>th</sup> Street  
Des Moines, IA 50319  
[thomas.mayes@iowa.gov](mailto:thomas.mayes@iowa.gov)  
515-281-8661

*Public Hearing*

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

Hearing 1: January 3, 2024, from 2:30 to 3:00, State Board Room, Grimes State Office Building, Des Moines, IA 50319

Hearing 2: January 4, 2024, from 10:30 to 11:00, State Board Room, Grimes State Office Building, Des Moines, IA 50319

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 rulemaking.

Any persons who intend to attend the hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the State Board and advise of specific needs.

*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 rulemaking action proposed:

ITEM 1. Strike “multicultural and gender-fair” wherever it appears in chapter 281—12 and insert “age-appropriate, multicultural, and gender fair” in lieu thereof.

ITEM 2. Adopt the following **new** definition of “age-appropriate” 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 that section 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.

ITEM 3. Adopt the following **new** definition of “sex act” in rule **281—12.2(256)**:

“*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. By 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 4. Adopt the following **new** paragraph **12.3(12)“d”**:

*d.* General. Each school district shall establish a kindergarten through grade twelve library program that is consistent with section 280.6 and with the educational standards established in this section, 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 materials accessible to students have access to age-appropriate materials based on their age and grade.

(5) In complying with the requirements in Iowa Code section 279.77, subsection 3, paragraph a, as added 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 web site in real time, must post an updated list at least two times per calendar year.

ITEM 5. Adopt the following **new** subrule(s) 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 section 279.80 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 section, 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, 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.