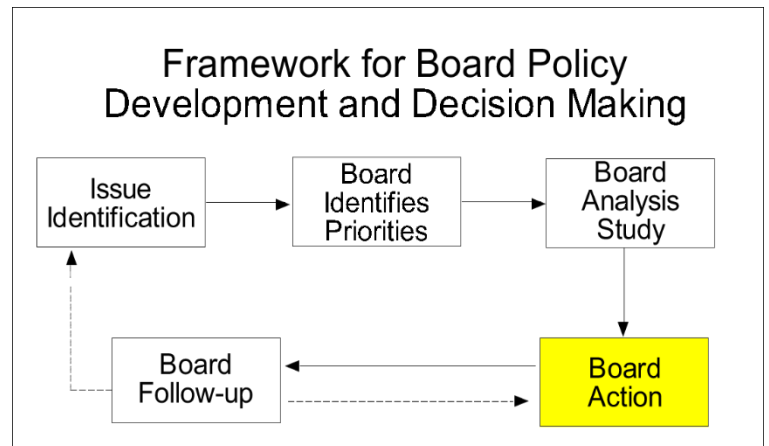


# Iowa State Board of Education

## Executive Summary

December 4, 2023



**Agenda Item:** Rules: 281 IAC Chapter 4 – “Waivers from Administrative Rules” (Adopt)

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

**State Board Role/Authority:** This rule making is proposed under the authority provided in Iowa Code section 17A.9A.

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

**Attachment(s):** One

**Recommendation:** It is recommended that the State Board adopt this new Chapter 4.

**Background:** As part of the Department of Education’s review of rules under Executive Order 10, the Department determined that a large portion of this chapter recites statutory text or is aspirational in nature. That text is removed and the chapter simplified.

## EDUCATION DEPARTMENT[281]

### Adopted and Filed

The State Board of Education hereby rescinds Chapter 4, “Waivers from Administrative Rules,” Iowa Administrative Code, and adopts a new chapter with the same title.

#### *Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in Iowa Code 17A.9A.

#### *State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code chapter 17A.

#### *Purpose and Summary*

As part of the Department of Education’s review of rules under Executive Order 10, the Department determined that a large portion of this chapter recites statutory text or is aspirational in nature. That text is removed and the chapter simplified.

#### *Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 4, 2023, as **ARC 7085C**.

Two public hearings were held on October 24, 2023: at 9:00 a.m., in the State Board Room, Grimes State Office Building, Des Moines, and at 5:00 p.m. in the Jim Hester Board Room, Davenport Schools Achievement Service Center, Davenport. No one attended the public hearings. No comments were received. No changes were made from the notice of intended action.

#### *Adoption of Rulemaking*

This rulemaking was adopted by the State Board of Education on December 4, 2023.

#### *Fiscal Impact*

This rulemaking has no fiscal impact to the state of Iowa.

### *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 this chapter.

### *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 January 31, 2024.

The following rulemaking action is adopted:

- ITEM 1. Rescind 281—Chapter 4 and adopt the following **new** chapter in lieu thereof:

## CHAPTER 4 WAIVERS FROM ADMINISTRATIVE RULES

**281—4.1(17A) 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*” means the same as defined in Iowa Code section 17A.9A(5).

**281—4.2(17A) General.** The director may grant a waiver of any administrative rule, if the waiver is consistent with Iowa Code section 17A.9A.

**281—4.3(17A) Criteria for waiver.** In response to a petition filed pursuant to this chapter, the director may in the director’s sole discretion issue an order waiving in whole or in part the obligations of a rule if the director finds, based on clear and convincing evidence, all of the factors listed in Iowa Code section 17A.9A(2) and that any waiver from the obligations of the rule in the specific case would not have a negative impact on the student achievement of any person affected by the waiver.

**281—4.4(17A) Filing of petition.** All petitions for waiver are submitted in writing to the Director, Department of Education, Grimes State Office Building, 400 East 14th Street, Des Moines, Iowa 50319-0146. 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.

**281—4.5(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 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, 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.

**281—4.6(17A) Additional information.** Prior to issuing an order granting or denying a waiver, the department 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 department may on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the department.

**281—4.7(17A) Notice.** The department will acknowledge receiving the petition 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 department may give notice to other persons. To accomplish this notice provision, the department may obligate the petitioner to serve the notice on all persons to whom notice is necessary by any provision of law and provide a written statement to the department attesting that notice has been provided.

**281—4.8(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.

**281—4.9(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 the reasons upon which the action is based, and a description of the precise scope and operative period of any waiver issued.

**4.9(1) General.** The final decision on whether the circumstances justify the granting of a waiver is in the sole discretion of the director, based on the unique, individual circumstances set out in the petition.

**4.9(2) Compliance with Iowa Code standards.** The department applies the standards and burdens in Iowa Code section 17A.9A(3).

**4.9(3) Administrative deadlines.** When the rule from which a waiver is sought establishes administrative deadlines, the director will balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

**4.9(4) Time for ruling.** The director 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 director 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 director to grant or deny a petition within the time period is deemed a denial of that petition by the director. However, the director remains responsible for issuing an order denying a waiver.

**4.9(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.

**281—4.10(17A) Public availability.** The department will comply with the public availability and filing procedures of Iowa Code section 17A.9A(4).

**281—4.11(17A) After issuance of a waiver.**

**4.11(1) *Cancellation.*** A waiver issued pursuant to this chapter may be withdrawn, canceled or modified if, after appropriate notice and hearing, the director 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.

**4.11(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.

**4.11(3) *Defense.*** After the director 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.

**4.11(4) *Judicial review.*** Judicial review of the director's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

**281—4.12(17A) *Exception.*** This chapter does not apply to 281—Chapters 36 and 37 or to specific waiver provisions adopted in other chapters.

These rules are intended to implement Iowa Code section 17A.9A.