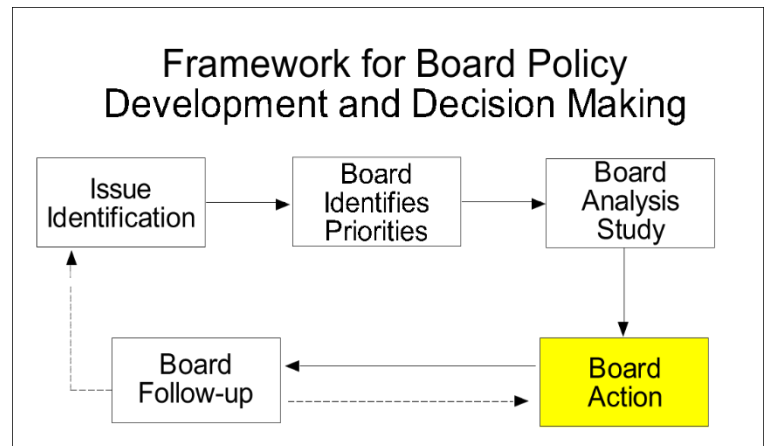


Iowa State Board of Education

Executive Summary

December 4, 2023



Agenda Item: Rules: 281 IAC Chapter 6 – “Appeal Procedures” (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 256.7(5).

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

Attachment(s): One

Recommendation: It is recommended that the State Board adopt this new Chapter 6.

Background: As part of the Department of Education’s review of rules under Executive Order 10, the Department determined several of the rules recite statutory text, recite text from the Uniform Rules on Agency Procedure on contested cases (which could be incorporated by reference), or are obsolete. The rulemaking removes that language and simplifies this chapter.

EDUCATION DEPARTMENT[281]

Adopted and Filed

The State Board of Education hereby rescinds Chapter 6, “Appeal Procedures,” Iowa Administrative Code, and to adopt a new chapter with the same title.

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, Iowa Code chapter 290.

Purpose and Summary

As part of the Department of Education’s review of rules under Executive Order 10, the Department determined several of the rules recite statutory text, recite text from the Uniform Rules on Agency Procedure on contested cases (which could be incorporated by reference), or are obsolete. The rulemaking removes that language and simplifies this chapter.

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 7088C**.

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 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 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 January 31, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 281—Chapter 6 and adopt the following **new** chapter in lieu thereof:

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 Procedure for contested cases, effective on July 1, 1999, which are published on the

general assembly’s website at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf, are incorporated by reference. The following additional definitions apply to this chapter:

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

“*Appellee*” 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*” 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 East 14th Street, Des Moines, Iowa 50319, or as ordered by the presiding officer.

“*Director*” 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 Procedure for contested cases, effective on July 1, 1999, are incorporated by 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 conference.

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 Iowa 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 actions.

18. X.30(17A) No factual dispute contested cases.

19. X.31(17A) Emergency adjudicative proceedings.

281—6.4(290,17A) Manner of appeal.

6.4(1) An appeal under this chapter is started by filing an affidavit, unless an affidavit is not obligated 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 section 4.1(34).

6.4(2) The director or designee, within five days after the filing of such affidavit, will notify the proper officer in writing of the taking of an appeal. The officer, within ten days, will file 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 will satisfy this rule.

6.4(3) The director or designee will 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 will be included with the notice.

The notice of hearing will contain 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, appeals, and licensing)).

6.4(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—6.5(17A) Record. The record of a contested case or appeal is described in Iowa Code section 17A.12(6).

281—6.6(290,17A) Decision and appeal.

6.6(1) The presiding officer, after due consideration of the record and the arguments presented, will make 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.

6.6(2) The decision may only 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.

6.6(3) A proposed decision of the presiding officer, if there is no appeal under subrule 6.6(4), is 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.

6.6(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 will 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.

6.6(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 ten 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.

6.6(6) The board may affirm, modify, or vacate the decision or may direct a rehearing before the director or the director's designee.

6.6(7) Copies of the final decision will be sent to the parties or their representatives by regular mail within five days after state board action, if mandated, on the proposed decision.

6.6(8) No individual who participates in the making of any decision may have advocated in connection with the hearing, the specific controversy underlying the case, or other pending factually related matters. Nor may 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—6.7(256,17A) Specific programs.

6.7(1) *General rule.* If a specific federal program's statutes or regulations impose criteria for appeals to the state board of education, the director of education, or the department of education,

those specific criteria govern and are incorporated by reference.

6.7(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 criteria 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, 20 U.S.C. 1411 et seq., and Iowa Code chapter 256B are governed by 281—Chapter 41.

c. Due process complaints under Part C of the Individuals with Disabilities Education Act, 20 U.S.C. 1431 et seq., are governed by 281—Chapter 120.

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