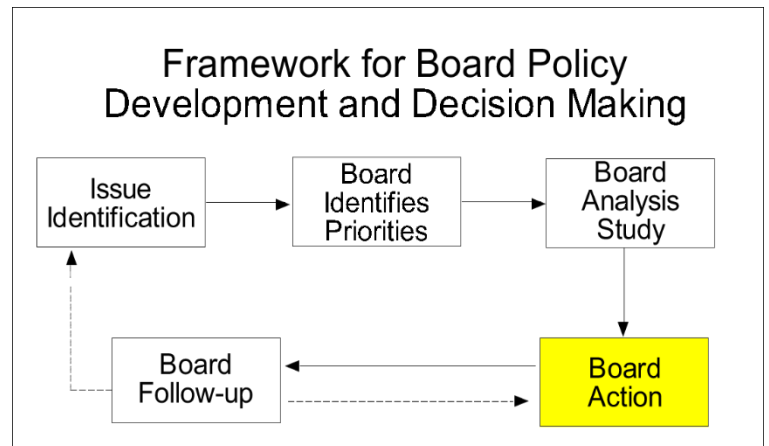


Iowa State Board of Education

Executive Summary

December 4, 2023



Agenda Item: Rules: 281 IAC Chapter 95 – “Equal Employment Opportunity and Affirmative Action in Educational Agencies” (Adopt)

State Board Priority: Ensuring Equity in Education

State Board Role/Authority: This rule making is proposed under the authority provided in Iowa Code section 19B.11.

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

Attachment(s): One

Recommendation: It is recommended that the State Board adopt this new Chapter 95.

Background: As part of the Department of Education’s review of rules under Executive Order 10, the Department identified rules that recite statutory text, contain unnecessary restrictive terms, are obsolete, or are aspirational in nature. One of the subrules raises constitutional concerns, as noted below. The Department proposes removing this language. Current paragraph 95.5(9)“h,” which provides, in part, that race or ethnic origin may be considered when “selecting applicants for interview, employment and promotion,” raises constitutional concerns and concerns under Title VI. For that reason, this provision will not be readopted. If an employer wishes to consider race or national origin when making employment decisions, the employer is advised to consult with counsel.

EDUCATION DEPARTMENT[281]

Adopted and Filed

The State Board of Education hereby rescinds Chapter 95, “Equal Employment Opportunity and Affirmative Action in Educational Agencies,” 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 section 19B.11.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code 19B.11.

Purpose and Summary

As part of the Department of Education’s review of rules under Executive Order 10, the Department identified rules that recite statutory text, contain unnecessary restrictive terms, are obsolete, or are aspirational in nature. One of the subrules raises constitutional concerns, as noted below. The Department proposes removing this language.

Current paragraph 95.5(9)“h,” which provides, in part, that race or ethnic origin may be considered when “selecting applicants for interview, employment and promotion,” raises constitutional concerns and concerns under Title VI. For that reason, this provision will not be readopted. If an employer wishes to consider race or national origin when making employment decisions, the employer is advised to consult with counsel.

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 7098C**.

Two public hearings were held on October 24, 2023: at 10:30 a.m., in the State Board Room, Grimes State Office Building, Des Moines, and at 5:30 p.m. in the Jim Hester Board Room, Davenport Schools Achievement Service Center, Davenport.

No one attended the hearing. No public comment was received. There are no changes 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 95 and adopt the following **new** chapter in lieu thereof:

CHAPTER 95

EQUAL EMPLOYMENT OPPORTUNITY

AND AFFIRMATIVE ACTION IN EDUCATIONAL AGENCIES

281—95.1(19B) Definitions. The following definitions will be applied to the rules in this chapter:

“*Affirmative action*” means action appropriate to overcome the effects of past or present practices, policies, or other barriers to equal employment opportunity.

“*Agency*” means a local school district, an area education agency or a community college.

“*Availability*” means the extent to which members of a racial/ethnic group, women, men or persons with disabilities are present within the relevant labor market.

“*Department*” means the Iowa department of education.

“*Director of education*” means the director of the Iowa department of education.

“*Equal employment opportunity*” means equal access to employment, training and advancement, or employment benefits regardless of race, creed, color, religion, sex, age, national origin and disability.

“*Metropolitan statistical area*” means a large population nucleus (over 50,000 persons) and nearby communities which have a high degree of economic and social integration with that nucleus. Each area consists of one or more entire counties.

“*Person with a disability*” means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment or is regarded as having such an impairment, as defined in Iowa Code section 216.2.

“*Racial/ethnic minority person*” means any person who is African American, Hispanic, Asian or Pacific Islander, American Indian or Alaskan Native.

“Relevant labor market” means the geographic area in which an agency can reasonably be expected to recruit for a particular job category.

“Underrepresentation” means having fewer members of a racial/ethnic group, women, men or persons with disabilities in a particular job category than would be reasonably expected based on their availability in the relevant labor market.

“Work force” means an agency’s full-time and part-time employees.

281—95.2(19B) Equal employment opportunity standards. An agency’s employment policies and practices shall provide equal employment opportunity to all persons. No person may be denied equal access to agency employment opportunities because of race, creed, color, religion, national origin, gender, age or disability.

281—95.3(19B) Duties of boards of directors. Each agency’s board of directors will adopt policy statements and develop plans for implementation of equal employment opportunity standards and affirmative action programs, which contain the following elements.

1. A policy statement outlining the board of directors’ commitment to the principles of equal employment opportunity and affirmative action, which contain procedures for employees and applicants for employment to redress complaints of discrimination.

2. A written equal employment opportunity and affirmative action plan, to be evaluated and updated on a biennial basis.

3. Assignment of responsibility to an employee for coordinating the development and ongoing implementation of the plans. This employee may be the same employee who has been assigned to coordinate the agency’s efforts to comply with federal laws requiring nondiscrimination in educational programs and employment.

4. Systematic input from diverse racial/ethnic groups, women, men and persons with

disabilities into the development and implementation of the plans, which may include using existing advisory committees or public hearing procedures.

5. Periodic training for all staff who hire or supervise personnel on the principles of equal employment opportunity and the implementation of its affirmative action plan.

6. Maintenance of necessary records to document its affirmative action progress. An agency will report employment data to the department by racial/ethnic category, gender and disability.

281—95.4(19B) Plan components. In addition to the board policy statement, each agency's equal employment opportunity and affirmative action plan will include, at a minimum, the following components:

95.4(1) General.

a. The name, job title, address and phone number of the employee responsible for coordinating the development and implementation of the equal employment opportunity and affirmative action plans.

b. An administrative statement on how the agency's equal employment opportunity and affirmative action policies and plans are to be implemented, including the internal system for auditing and reporting progress, to be signed and dated by the chief executive officer of the agency.

c. A work force analysis showing the numerical and percentage breakdown of the agency's full-time and part-time employees within each major job category (consistent with the E.E.O. 5 and E.E.O. 6 occupational categories reported to the United States Equal Employment Opportunity Commission) by racial/ethnic group, gender, and disability. For the purpose of confidentiality, disability data may be based on total agency figures, rather than those of major job categories.

d. A quantitative analysis comparing work force analysis figures with the availability of qualified or qualifiable members of racial/ethnic groups, women, men and persons with disabilities

within the relevant labor market.

e. When underrepresentation is identified in one or more major job category, the agency will conduct a qualitative analysis to be included in the agency's affirmative action plan. The qualitative analysis is a review of employment policies and practices to determine if and where those policies and practices tend to exclude, disadvantage, restrict or result in adverse impact on the basis of racial/ethnic origin, gender, or disability. The analysis may include, but is not limited to the review of:

- (1) Recruitment practices and policies;
- (2) A demographic study of the applicant pool and flow;
- (3) The rate and composition of turnover in major job categories;
- (4) Trends in enrollment that will affect the size of the work force;
- (5) Application and application screening policies and practices;
- (6) Interview, selection, and placement policies and practices;
- (7) Transfer and promotion policies and practices;
- (8) Discipline, demotion, termination, and reduction in force policies and practices;
- (9) Employee assistance, training selection, and mentoring policies and practices;
- (10) The impact of any collective bargaining agreement on equal employment opportunity and the affirmative action process;
- (11) Law, policies or practices external to the agency that may hinder success in equal employment opportunity and affirmative action.

95.4(2) Quantitative goals. The agency will develop numerical goals and timetables for reduction of underrepresentation in each major job category where it has been identified. These goals are not rigid and inflexible quotas, but reasonable aspirations toward correcting imbalance

in the agency's work force. A goal shall not cause any group of applicants to be excluded from the hiring process. When setting numerical goals, agencies will take into consideration the following:

a. The numbers and percentages from the work force analysis conducted pursuant to subrule 95.4(1);

b. The number of short- and long-term projected vacancies in the job category, considering turnover, layoffs, lateral transfers, new job openings, and retirements;

c. The availability of qualified or qualifiable persons from underrepresented racial/ethnic, gender and disability categories within the relevant labor market;

d. The makeup of the student population served by racial/ethnic origin, gender and disability;

e. The makeup of the population served by racial/ethnic origin, gender and disability;

f. The makeup of the population of the metropolitan statistical area, when applicable, by racial/ethnic origin, gender, and disability.

95.4(3) *Qualitative goals.* The agency will develop qualitative goals, activities and timetables which specify the appropriate actions and time frames in which problem areas identified during the qualitative analysis are targeted and remedied. In setting qualitative goals and planning actions, the agency may consider, but need not be limited to, the following:

a. Broadening or targeting recruitment efforts;

b. Evaluating and validating criteria and instruments used in selecting applicants for interviews, employment, and promotion;

c. Providing equal employment opportunity, affirmative action, and intergroup relations training for employees of the agency;

d. Developing a system of accountability for implementing the agency's plan;

e. Developing and implementing an employee assistance and mentoring program;

f. Establishing a work climate that is sensitive to diverse racial/ethnic groups, both women and men and persons with disabilities;

g. Negotiating the revision of collective bargaining agreements to facilitate equal employment opportunity and affirmative action.

95.4(4) *Absence of minority base.* Agencies with no minority students enrolled or no minority employees shall develop goals and timetables for recruiting and hiring persons of minority racial/ethnic origin when those persons are available within the relevant labor market.

95.4(5) *Consolidation.* An agency may consolidate racial/ethnic minorities and job categories into broader groupings in conducting analyses under this chapter when its size or number of employees makes more specific categories impractical.

281—95.5(19B) Dissemination. Each agency will adopt an internal and external system for disseminating its equal employment opportunity and affirmative action policies and plans.

95.5(1) *Plan distribution.* An agency will annually distribute its policies and plans to agency employees involved in the hiring or management of personnel, and the agency will make the policies and plans available to other agency employees, the public and the director of education upon request.

95.5(2) *Policy statement distribution.* An agency will distribute its policy statement to all applicants for employment, and the agency will distribute the policy statement annually to employees, students, parents, and recruitment sources.

281—95.6(19B) Reports. Each agency will submit an annual progress report on equal employment opportunity and affirmative action to its local board of directors. Each agency will submit its annual progress report under this chapter to the department by December 31 of each year. The report is a part of the basic educational data collection system administered by the

department.

These rules are intended to implement Iowa Code section 19B.11.