

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

Department Name:	Education	Date:	May 30, 2023	Total Rule Count:	17
IAC #:	281	Chapter/ SubChapter/ Rule(s):	4	Iowa Code Section Authorizing Rule:	17A.9A
Contact Name:	Thomas Mayes	Email:	thomas.mayes@iowa.gov	Phone:	515-281-8661

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 rules waiver process to constituents.

Is the benefit being achieved? Please provide evidence.

Unclear. The department rarely receives petitions for rules waivers. Many of the Department’s programs contain waivers embedded in the programs themselves. See, e.g., Iowa Code § 256.11(8).

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

None noted.

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

None noted.

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Does this chapter/rule(s) contain language that is obsolete, outdated, inconsistent, redundant, or unnecessary language, including instances where rule language is duplicative of statutory language?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 or are aspirational in nature.

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

Current rules 4.2, 4.3, and 4.12 are eliminated as unnecessary. Current rules 4.13 through 4.17 are proposed for consolidation in one rule.

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

The chapter contains twelve proposed rules (see attached).

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

METRICS

Total number of rules repealed:	5 (net)
Proposed word count reduction after repeal and/or re-promulgation	580
Proposed number of restrictive terms eliminated after repeal and/or re-promulgation	18

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

None noted.

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, subsection 5.

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

281—4.3(17A) Criteria for waiver. In response to a petition filed pursuant to rule 281—4.6(17A), the director may in the director’s sole discretion issue an order waiving in whole or in part the requirements of a rule if the director finds, based on clear and convincing evidence, all of the factors listed in Iowa Code section 17A.9A, subsection 2, and that any waiver from the requirements 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 must be submitted in writing to the Director, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146. If the petition relates to a pending contested case, the petition shall be 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 each of the five criteria described in rule 281—4.4(17A). 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 shall 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 required by any provision of law. In addition, the department may give notice to other persons. To accomplish this notice provision, the department may require the petitioner to serve the notice on all persons to whom notice is required 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 shall be in writing and 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, subsection 3.

4.9(3) Administrative deadlines. When the rule from which a waiver is sought establishes administrative deadlines, the director balances 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 shall 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 shall 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 required 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 shall be 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 requirements of Iowa Code section 17A.9A, subsection 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:

1. 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
2. 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
3. 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.