

STATE OF IOWA
BOARD OF EDUCATIONAL EXAMINERS

Grimes State Office Building – 400 E. 14th St.
Second Floor State Board Room
Des Moines, IA 50319-0147

JUNE 23, 2011

BOARD ORIENTATION AGENDA
Times are approximate

- | | |
|--------------------------|--|
| 12:00 – 1:00 p.m. | 1. Lunch provided -- All Board Members (3 North) |
| 1:00 p.m. | 2. Call Meeting to Order |
| 1:05 p.m. | 3. Approve the Agenda (Tab 1) |
| 1:05 – 5:00 p.m. | 4. Board Orientation <ul style="list-style-type: none">- Orientation PowerPoint (Tab 2)- Iowa Gift Law (Tab 3)- FAQ's handout (Tab 4)- Chapter 11 and internal complaint process (Tab 5)- Chapter 25 (Tab 6)- How to read legal documents (Tab 7)- Model Motions (Tab 8)- Operating Guidelines (Tab 9) |

Recess until 9:30 a.m. Friday, June 24, 2011

**Professional Practice Committee will meet following the Board
Recess (State Board Rm.)**

- 5. Dinner – on your own**



Orientation Materials for Licensing Board Members

Board of Educational Examiners

Prepared by the Licensing and Administrative Law
Division, Iowa Attorney General's Office

Spring, 2000

Revised, May 2009 by BoEE Staff



Purpose of Professional Licensing Board

- Primary purpose is to protect the public from incompetent or unethical practitioners.
- Purpose accomplished through gatekeeping (licensing) and policing the profession (discipline).
- Keep in mind, these functions are very different than those pursued by professional or trade organizations.



Professional Licensing Board Powers

- **Source:** As with any state agency, board powers are conferred by the Iowa Legislature.
- **Scope:** Boards exercise only that authority provided by statute.
- **Be familiar with the laws governing Board**

Operation:

- Iowa Code chapters 17A (Administrative Procedures Act-applies to all state agencies)
- Iowa Code 272 (the BoEE enabling statute).



Use Power Wisely

- Boards exercise considerable authority over licensees and license applicants.
- As representatives of the State, board members must exercise governmental powers wisely.
- Be effective, but also be fair and just – to the public and to licensees – and avoid even the appearance of impropriety.



Rulemaking

Communicating Policy and procedures to the public

- The Legislature enacts the board's enabling statute.
- The Legislature authorizes and, in some instances, requires boards to adopt rules to interpret and implement statutory requirements.
- Properly adopted administrative rules have the force and effect of law.
- Rules may be amended to reflect changes in governing statutes or revision of board policy.



Rulemaking Procedure

Procedure for Adoption of Rules: Code 17.4

- Standard Process – initial consideration, publication, comment, and final adoption:
 - ▶ Proposal for new rule or amendment to existing rule drafted by staff and presented for discussion
 - ▶ A proposal must be approved by the board for filing and published under “Notice,” for public comment
 - ▶ The Board again considers proposed rule, with public comments received, prior to final adoption
- Emergency rulemaking process – allows an agency to bypass the public comment period in exceptional circumstances.



Rulemaking

- Rules should be:
 - ▶ Easy to read and understand
 - ▶ Consistent with statute
 - ▶ Tied to specific needs and objectives
 - ▶ Sensitive to costs – benefits should outweigh costs
 - ▶ Effective
 - ▶ Developed with input by those affected
 - ▶ Fair
- Ask yourself – is the proposed rule necessary, complete, concise, and clear?



Waiver of Rules

Code § 17A.9A and chapter 6 of the BoEE rules

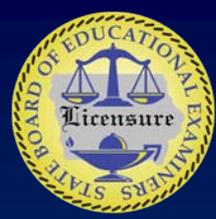
- ▶ A request by an individual for waiver or variance of an existing rule is initiated by filing a Petition for Waiver with the Board.
- ▶ Board staff will review the request and provide a summary of the request and relevant rules to the Board
- ▶ Board action – the Board is required to grant or deny each Petition and issue a written decision.



Let the Sun Shine In

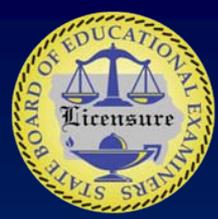
Iowa's Freedom of Information laws

- The Board of Educational Examiners is a state agency which must comply with Iowa's Open Meetings (Code ch. 21) and Public Records (Code ch. 22) laws.
- Licensees, persons who use professional services and other members of the public are entitled by law to attend meetings of the board and receive copies of board records – unless a specific statute allows or requires confidentiality.



Board Meetings

- The public is entitled to prior notice of all board meetings. A meeting is:
 - Any gathering – in person or electronically - formal or informal,
 - Of a majority of the board,
 - When there is deliberation or action on any matter within the scope of the board's authority.
- Does not include a purely social event or advisory committee of less than a quorum which is not delegated policy-making or decision-making authority.



Conducting an Open Session

- During an open session, all members of the public have access.
 - The public may use cameras or recording devices at any open session.
 - Reasonable rules of conduct may restrict interference or interruption by spectators.
 - The Open Meetings Law does not require an opportunity for public participation, but BoEE agendas typically include an opportunity for public comment.
- The BoEE has adopted Robert's Rules of Order to guide operational meeting procedures.



Public Notice of Board Meetings

- Public notice must be provided at least 24 hours in advance of a meeting.
- Notice must include the date, time, place, and tentative agenda.
- Notice must provide sufficient information to reasonably inform the public of the topics to be discussed and action to be taken.
- The Executive Director and Board Chair develop the agenda with input from members and staff.



Open Session Minutes

- Minutes of an open session shall reflect:
 - ▶ Date, time and place of meeting
 - ▶ Members present
 - ▶ Action taken – reflecting each member's vote
 - ▶ Grounds for holding a closed session, if applicable.
 - ▶ Final action on any matter discussed in closed session.



Holding a Closed Session

- The Board may go into closed session only for reasons specifically included within the Open Meetings law.
- Grounds for holding a closed meeting include:
 - To review or discuss confidential records, such as college transcripts, criminal history data, or substance abuse records.
 - To discuss whether to initiate a licensee disciplinary investigation or proceeding.
 - To deliberate the decision in a formal administrative hearing, such as a licensee disciplinary hearing.



Grounds for Holding a Closed Session

Continued

- To discuss strategy with counsel about present or imminent litigation where disclosure would likely prejudice or disadvantage the position of the board in litigation.
- To avoid disclosure of certain law enforcement matters, such as prosecution, settlement or auditing criteria.
- To evaluate professional competency of staff or job applicants – when necessary to prevent needless and irreparable injury to the person's reputation and the person requests a closed session.



Mechanics of Holding a Closed Session

- The Board may
 - ▶ Close only upon the affirmative vote of 2/3 members **or** of all members present (if less than 2/3 of board).
 - ▶ Only discuss matters in closed session which are directly related to the stated reason for closing the session.



Mechanics of Holding a Closed Session

- The Board must:
 - Publicly announce and enter in the minutes each member's vote and the reason for holding a closed session.
 - Take final action in open session.
 - Keep detailed minutes of all discussion, persons present, and action occurring in closed session.
 - Tape record entire closed session.
 - Seal and keep minutes and tape recording at least one year – shield from public inspection absent a court order for in camera review.



Open Meetings - Enforcement

- Violations can be enforced by any aggrieved person, taxpayer to Iowa, citizen of Iowa, Attorney General, county attorney.
- Ignorance of the law is not a defense, but reliance on advice of counsel is a defense.
- Burden on the board to demonstrate compliance.
- Remedies include individual assessment of damages (\$100-500) and attorney fees against each board member involved in the violation.



Public Records

- Boards generally delegate responsibility for compliance with Iowa's Public Records laws to administrative staff.
- Refer requests for public records to board staff.
- Be familiar with confidentiality laws governing any board records in the possession of a board member.



Confidential Records

- Licensee disciplinary complaint and investigatory files are strictly confidential – typically, only hearing notices and Board decisions are open records.
- Medical, mental health and substance abuse records are confidential.
- Exam contents, individual exam scores, criminal history, and social security numbers are confidential.



Public Records - Enforcement

- Improper release of some confidential records, such as exam scores, is a simple misdemeanor.
- Improper refusal to release open records may also trigger criminal and civil penalties.
- Violations of Iowa's Public Record's laws are enforced in a manner similar to violations of Iowa's Open Meetings laws.
- When in doubt, consult staff or legal counsel.



Gift Law

Code section 68B.22

- Board members are covered by Iowa's Gift Law which precludes receipt of a "gift" worth more than \$3.00 from a restricted donor, unless a statutory exception applies.
- Ask yourself:
 - Am I getting something for nothing or less than it is worth? If so, you are receiving a gift.
 - Am I receiving the gift from someone regulated by the board, who lobbies the Board, or who is in a prospective or existing contractual relationship with the board? If so, the Gift Law applies.
- Familiarize yourself with the Gift Law Handbook.



Immunity and Defense

- Board members are not civilly liable under state law for good faith acts, omissions or decisions in connection with board duties.
- Board members are defended by the Attorney General's office and indemnified by the State for good faith acts within the scope of a board member's duties.



Licensing Standards

The Gatekeeping Function

- The Board of Educational Examiners has the “exclusive authority” to license education practitioners, including administrators, teachers, and para-educators and to provide authorizations to school coaches.
- Licensing authority includes the power to:
 - Establish criteria for each license and endorsement,
 - Set renewal requirements, and
 - Define the scope of instruction or administrative function authorized by each license and endorsement.



Licensee Discipline

Policing the Profession

- The Board of Educational Examiners
 - ▶ Is authorized to develop a Code of Professional Rights, Responsibilities, Practices, and Ethics – 282 IAC ch. 25 and 26
 - ▶ Enforces this Code through disciplinary proceedings, which may result in reprimand of a licensee, suspension or revocation of a license, or other appropriate sanction as determined by the Board



Due Process

- All licensees are entitled by the Iowa Code, and the Iowa and U.S. Constitutions to due process.
- This means all disciplinary action must be preceded by:
 - Timely notice of charges, and
 - An opportunity for a fair and impartial evidentiary hearing.



Disciplinary Investigations

- Board members review complaint and investigatory materials to determine whether charges should be filed.
- Board members do not personally investigate complaints – refer any contacts about disciplinary investigations to the board office.
- Board members who personally investigate are disqualified from making any decisions in the matter (unless the licensee waives the right to seek disqualification).



Disqualification

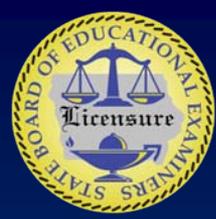
Recusal may be required

- Board members must disqualify themselves if they are personally interested in the case or are biased.
- Being acquainted with a licensee is not itself grounds for disqualification, unless due to a relationship or other factors the board member is not capable of fairly judging the facts.
- When in doubt, seek advice.
- If you are disqualified, you should recuse yourself from all discussion of and action on the case.



Board Members as Judges

- Once probable cause is found, the board's role is to decide the case based solely on the evidence and argument presented at hearing.
- The board decides whether a law or rule has been violated and what, if any, discipline is warranted.
- Board members should be familiar with the Code of Administrative Judicial Conduct.



Key Roles in a Disciplinary Case

Before Probable Cause is Found

- Board Members: decide whether there is probable cause (a reasonable basis) to initiate case.
- Assistant Attorney General (AAG): is available to assist the board in determining whether there is a legally sufficient basis to proceed to hearing, and whether the allegations are adequately supported by the complaint and investigatory materials.



Key Roles in a Disciplinary Case

After Probable Cause Finding

- Board Members: decide case
- Assistant Attorney General: prosecutes case
- Licensee: defends case
- Administrative Law Judge (ALJ): assists board with pre-hearing and hearing procedures, and may conduct the hearing
- Staff: advises board in deliberations unless disqualified



“Ex Parte” Communications

- Once the case has begun, it is unfair for either the complainant or the licensee to communicate with the board without the other side present.
- Communications about the case with only one side present are “ex parte.”
- No ex parte communications about the case are allowed after probable cause has been found until the case is finally decided – violations are serious and can result in disqualification or sanctions. Promptly seek legal advice if you initiate or receive a prohibited ex parte communication.



Prohibited Ex Parte Communications

- As soon as probable cause has been found, board members are prohibited from having ex parte communications with:
 - The Complainant
 - Licensee and licensee's counsel
 - Advocates, such as witnesses
 - Anyone with a personal interest in the case
 - Anyone who personally investigated, such as a board investigator or peer review committee
 - Staff members who are disqualified.



Material, Factual Information

- Board members who learned of facts on an ex parte basis before probable cause was found may need to disclose those facts after the case is set for hearing if: (1) the facts may impact the outcome of the case, and (2) the facts are not supplied to the licensee and complainant in investigatory materials or discovery.
- This assures all parties are aware of material facts known to the decision makers.
- Promptly seek advice from the ALJ or AAG if you know facts which may need to be disclosed.



Disciplinary Decisions

- At the conclusion of a disciplinary hearing, a proposed decision will be prepared by the ALJ after deliberation with all board members who presided at the hearing.
- Board members should carefully and critically review the proposed decision to assure it accurately describes technical matters, such as professional standards, and fully explains factual findings and the board's rationale for any discipline imposed.



Resources

There are no silly questions.

- The Executive Director and Board Staff are always available to provide information and assistance.
- Other Board members are willing to explain what to expect and help you learn the process.
- Minutes of past Board meetings and a great deal of information about the licensure process is available at the Board's website:
 - www.boee.iowa.gov

Department of Administrative Services - State Accounting Enterprise

Section PRE-AUDIT	Procedure No. 240.200	Page No. 1 of 1	Effective Date July 1, 2003 Pg. Revised 6/1/04
Subject MISCELLANEOUS – GIFTS/CONFLICTS OF INTEREST OF PUBLIC OFFICERS AND EMPLOYEES			

1. Section 68B.22 of the Code of Iowa details when it is acceptable for public officials, employees, candidates, or the person's immediate family member to accept gifts. A number of exceptions are set out, but the most generic is the allowable acceptance of a non-monetary gift with a value of \$3 or less received in one calendar day from one donor.
2. Many of the rules related to the acceptance of gifts are dependent on whether or not the giver is a "restricted donor". Because each situation is dependent on who the restricted donors are for each individual department, it is important that before any public official, employee, candidate or the person's immediate family member accepts a gift, a consultation is made with their state department's legal counsel, respective assistant attorney general, or the Iowa Ethics and Campaign Disclosure Board (281-3489).
3. Departments who are requesting expenses that appear to be related to receiving a gift (examples include registration fees, meals, etc.), must include a notation on the claim that the State's gift law has been reviewed and has not been violated.
4. Penalties for violating the provisions of Section 68B.22 are included in Section 68B.25 and include civil penalties of up to \$2,000 per violation, suspension and prosecution for a serious misdemeanor.

**BOARD OF EDUCATIONAL EXAMINERS
FREQUENTLY ASKED QUESTIONS REGARDING COMPLAINTS,
INVESTIGATIONS, AND HEARINGS**

Prepared by the Licensing and Administrative Law Division
Iowa Attorney General's Office
July 2005

- **What is the board's role in regulating and disciplining its licensees?**

The board is entrusted with the duty to protect the public, not the profession. It is important to be mindful of the distinction between being a member of a professional association and being a member of a professional licensing board. An association's function is to advocate for its professional members. Licensing board members are appointed to protect the public interest by establishing standards for the issuance of practitioner licenses and ensuring that members of the profession adhere to the criteria of professional practices and competent performance which the board has adopted. The Iowa Supreme Court has observed that the "sole purpose of the board's power [to impose discipline] is to provide a means of protecting the school community from harm." Erb v. Iowa State Board of Public Instruction, 216 N.W.2d 339 (Iowa 1974).

- **How does the board's disciplinary function relate to the board's licensure function?**

The disciplinary function is a segment of the licensing function. Licensing authority includes the authority establish standards for the issuance and renewal of practitioner licenses [gate keeping -- or regulating entry into the profession] and the authority to develop and enforce a code of professional rights and responsibilities, practice, and ethics governing the conduct of practitioners [policing the profession]. Iowa Code § 272.2(1).

- **What is the role of the assistant attorney general before a probable cause determination?**

The assistant attorney general (AAG) who typically advises the board reviews all complaints and investigative material and is available to advise the professional practices committee and the full board as they review these materials to determine probable cause. The AAG may also assist the Executive Director in drafting the Notice of Hearing.

- **What is the role of the assistant attorney general after a probable cause determination?**

The AAG prosecutes the case on behalf of the public interest, and presents evidence supporting the allegations upon which probable cause has been found at hearing. Once the Notice of Hearing has issued, the function of the AAG is restricted to prosecuting the case. As prosecutor the AAG can not act as legal advisor to the board on issues arising in that case.

- **Who answers legal questions after charges are filed?**

Most legal or procedural questions can be answered by the administrative law judge (ALJ) before, during or after the hearing. If necessary, board members may consult with a neutral advisor from the Attorney General's Office. Currently, Assistant Attorney General Julie Burger (281-5881) is available to provide legal advice. She is in a different bureau from the attorneys who prosecute board cases and – to avoid conflicts – will have no contact about the case with the assistant attorney general prosecuting the case, or that attorney's supervisor.

- **Who can file a complaint against a licensee?**

Pursuant to the board's rules, 282 IAC 11.4(1), the following persons or groups are entitled to file a complaint with the board:

(1) Licensed practitioners employed by a school district or their educational entity or their recognized local or state professional organization.

(2) Local boards of education.

(3) Parents or guardians of students involved in the alleged complaint.

(4) The Executive Director of the board may initiate a complaint only if no other complaint has been filed and a) she receives and verifies that a practitioner has been convicted of a felony or misdemeanor involving a victim 18 years of age or younger or has been the subject of a founded abuse report, and she finds that the nature of the crime or abuse directly impacts the practitioner's fitness or ability to continue to perform as a practitioner; b) she determines that a practitioner has falsified a license or authorization issued by the board; or c) she finds that an applicant has submitted false information on an application filed with the board.

(5) The department of education under limited circumstances involving behind-the-wheel instructor's certifications issued by the DOT.

- **What types of complaints does the board receive?**

A complaint filed with the board must relate to alleged violations of state law or the board's administrative rules. The board receives complaints regarding a variety of issues, including contract violations, sexual misconduct, improper relationships / boundary violations, physical abuse, and other ethical and competency violations.

- **What happens after a complaint is filed?**

Each complaint is assigned a case number and is initially reviewed by the Executive Director and legal counsel to determine if the complaint should be accepted and assigned for investigation. The complaint must be timely, filed by an authorized Complainant, relate to a matter within the board's jurisdiction, and allege acts which, if proven, would constitute a violation of the board's rules of professional practice and competent performance of a sufficient magnitude to warrant Board action if proven. If a complaint does not meet this threshold, it may be rejected by the Executive Director without further investigation. 282 IAC 11.3(6); 11.5.

- **Who conducts the investigation and how is it conducted?**

If the complaint meets the board's jurisdictional requirements, the complaint is assigned to the board investigator, who is responsible for investigating the allegations contained in the complaint. The investigator contacts the complainant, respondent, and relevant witnesses; requests additional relevant information including prior investigative information compiled by the local school, DHS, or law enforcement officials; and may interview the complainant, respondent, or other witnesses if necessary. If a criminal conviction is alleged, copies of relevant court documents will also be obtained. In the course of the investigation the licensee is always given the opportunity to respond to the allegations contained in the complaint. 282 IAC 11.5.

- **May the investigator look into matters which are not included in the complaint?**

No. The board is required to limit the investigation to the allegations contained on the face of the complaint. Iowa Code § 272.2(15); 282 IAC 11.5.

- **What happens after the investigation is completed?**

Following completion of an investigation, the investigator submits an investigative report to the board. The professional practice committee of the board reviews the complaint and investigative report with the Executive Director and legal counsel, and makes a recommendation to the full board. Under existing board rules [282 IAC 11.6], the board can pursue one of three options:

(1) The board can dismiss, or reject, the case. The board dismisses a case when probable cause does not exist to support the allegations contained in the complaint or when the board finds that the allegation, even if proven, would not constitute a violation of the board's rules of a sufficient magnitude to warrant disciplinary action by the board. The board is required to issue a statement of the reasons for dismissing a complaint at this stage of the process. Lewis Central Education Association v. BEE, 625 N.W.2d 687 (Iowa 2001).

(2) The board can request further investigation. The board pursues this option when additional questions exist regarding the investigation.

(3) The board can accept the case and initiate a contested case hearing. The board may pursue this option when it determines that probable cause exists support the allegations contained in the complaint that are of a sufficient magnitude to support proceeding to hearing. The term "probable cause" means a reasonable grounds for belief that the allegations contained in the complaint did occur. Probable cause is equivalent to "reasonable cause" and is often defined as "more than mere suspicion but less than the quantum of evidence required for conviction."

- **What happens after the board makes a probable cause determination?**

When the board finds probable cause to proceed to hearing, a date for the hearing is set and a formal Notice of Hearing is sent to the Complainant and Respondent. The Notice informs the parties of the time and place of the hearing and the legal authority under which the hearing is to be held – including reference to the specific statutes or rules which are alleged to have been violated. The notice also includes a short statement and plain statement of the allegations. 282 IAC 11.7.

- **Who conducts the hearing?**

The board is authorized to conduct the hearing as a full board or by designating a panel of board members. The board may also delegate this function to an administrative law judge (ALJ). 282 IAC 11.8. If an ALJ conducts the hearing, the ALJ prepares a proposed findings of fact, conclusions of law, decision and order for the board. The board is prohibited from delegating final decision making authority to an ALJ. The board may initiate review of the proposed decision, and either party may appeal from the proposed decision. 282 IAC 11.27, 11.28.

- **What is the board's role at hearing?**

If the board or a panel of board members conducts the contested case hearing, the board's role is to decide the case after considering the evidence and argument presented at hearing. As impartial arbitrators, the board members should use their expertise to resolve any factual-disputes in reaching a final decision on whether a violation of the board's statute or administrative rules has occurred and what, if any, discipline is warranted. In order to discipline a licensee, the preponderance of the evidence must establish that the licensee violated the statute or rule at issue. The preponderance standard requires that "the prevailing factual conclusions must be based on the weight of the evidence." This standard means that the board "must be convinced that the factual conclusion it chooses is more likely than not."

- **What is the role of the administrative law judge at hearing?**

If the board or a board panel sits as the decision maker at hearing, an ALJ will be present to assist in conducting the hearing. The board frequently refers procedural or evidentiary rulings to the ALJ, although the board retains the right to rule on such matters. If the hearing is conducted by an ALJ without the presence of the board or a panel of the board, the ALJ conducts the proceeding and prepares a proposed decision based upon the evidence presented.

- **May the Board consider factual information contained in the investigative report or received from other sources if it is not presented at the hearing?**

No. The decision issued in each case must be based only upon the testimony, documentary evidence, and arguments presented at the hearing. Board members are not permitted to rely upon any information which has not

been introduced at the hearing, even if the information was included in the investigative report. This is why Board members are asked to turn in all investigative material after the Board makes a probable cause determination. Board members may, however, consider past decisions, their own experience, and professional knowledge when determining whether the events proven constitute a violation of the board's rules and, if so, determining an appropriate sanction.

- **What does "ex parte communications" mean? Who can and can't I talk to about a case?**

"Ex parte" means a communication by a board member with only one party to a case. Board members are prohibited from having ex parte communications with any party to a case once the board makes a probable cause finding. Board members, as decision makers, are prohibited from discussing the case with anyone who has a personal interest in the case, the complainant, the complainant's attorney, the licensee, the licensee's attorney, and all witnesses. The prohibition does not prevent such communication if the parties all have notice and an opportunity to participate. Board members can consult with board staff about the case, including consultation in closed session deliberations, so long as the staff member is not personally interested in the case and has not advocated in the case. 282 IAC 11.24.

- **What is the procedure at hearing?**

The order of most hearings is similar to a trial, including opening statements, the presentation of the testimony and exhibits, and closing arguments. Hearings of the board held are open to the public. Board members and the ALJ are allowed to ask witnesses any question which is relevant to the allegations contained in the complaint. The complainant is responsible for prosecuting the case before the board. The ALJ will act as the presiding officer and will guide the board and parties through the procedures at hearing. If the board or a panel of the board preside at the hearing, following the presentation of the evidence, the board and the ALJ will immediately proceed to deliberate the case in closed session. The ALJ will then draft a decision. If the full board presides, the initial decision is final. If the ALJ preside alone, or with less than a quorum of the board, a proposed decision will be issued. 282 IAC 11.21, 11.27.

- **What is the procedure after issuance of a proposed decision?**

Copies of the proposed decision are provided to board members and each of the parties to the hearing. Either party may initiate an appeal from the decision, presenting additional written arguments to the board. The board may also initiate review of a proposed decision. Board review is appropriate if the board disagrees with, or wishes to further consider, the findings, conclusions, or proposed sanction set forth in the proposed decision. If the board acts to initiate review, each party will be notified and provided an opportunity to submit written argument addressing the issues identified for review by the board. Upon expiration of the time for initiation of board review or an appeal (60 days), if appeal has not been taken and the board has not acted to initiate review, the proposed decision automatically becomes the board's final decision. 282 IAC 11.28.

- **What are the board's options for discipline?**

The board has the authority to impose a broad range of disciplinary sanctions, including: revocation; suspension (for a specific period of time or until further order of the board); requiring additional education or training; ordering a physical or mental evaluation; issuing a public letter of reprimand; or any other resolution appropriate to the circumstances of the case (for example, placing a restriction upon transporting students upon a practitioner whose driver's license is under suspension for OWI offenses). 282 IAC 11.33.

- **How long does this process take?**

The board is required to "resolve" complaints within 180 days after filing, unless good cause is shown for an extension of this time limitation. Iowa Code § 272.2(15). Given the amount of time needed to schedule and conduct a hearing, obtain a proposed decision, consider the proposed decision and conduct an appeal, if requested, complaints which go to hearing are seldom resolved within the 180-day time period.

- **May a practitioner waive due process?**

Due process is a basic constitutional principle that requires notice and an opportunity to respond to allegations before action impeding an individual's property or liberty interests is taken. Under this principle, discipline can not be imposed against a licensee unless the licensee has notice of the allegations presented and an opportunity for a hearing. A licensee may waive his or her

right to notice and/or hearing and voluntarily agree to surrender a license or authorization, or agree to accept a lesser sanction. 282 IAC 11.4(6). When a waiver of notice and/or hearing is presented, the board should review the document to assure that the licensee has made a knowing waiver of due process rights. The board may issue an order accepting the proposed surrender imposing the proposed sanction if the board finds that the sanction is appropriate for the circumstances of the case.

- **What is "local settlement" of a complaint?**

The parties to complaints filed with the board are allowed to mutually agree to a resolution of the complaint at any time prior to issuance of a final order by the board. Iowa Code § 272.2(15). The local resolution must be committed to a written agreement and filed with the board. A "local settlement" is not subject to approval by the board, but shall be acknowledged by the board and may be incorporated into an order by the board. 282 IAC 11.4(5). If the local settlement contemplates or calls for the issuance of a sanction by the board, the board may issue an order implementing the sanction agreed upon or may decline to issue an agreed upon sanction if, in the board's judgment, the agreed upon sanction is not appropriate for the circumstances of the case. 282 IAC 11.4(6).

- **Does the Assistant Attorney General assigned to prosecute a case ever negotiate a settlement?**

Yes, the AAG may attempt to resolve a complaint through settlement. In doing so, consideration will be given to past decisions of the board, the likelihood that the allegations will be proven, and mitigating circumstances which may exist. If a settlement proposal is accepted by the licensee and AAG, the proposal will be presented to the board for approval. The board is not bound to accept proposal presented in this manner.

- **When should I disqualify myself from hearing a case?**

Board members must disqualify themselves (often referred to as "recusal") from participating in a case if they are personally interested or have advocated in the case or a factually similar case involving the same parties. Board members should also be disqualified if they are biased. A board member is biased if he or she is not capable of judging a case fairly on the basis of the evidence presented. You are not required to disqualify yourself simply because you are personally acquainted with a licensee, but you must disqualify yourself if due to your relationship with the licensee or any other factors you are not capable of

judging the case fairly. If you have any questions about whether you should recuse yourself from a case, you should seek legal advice. 282 IAC 11.11.

- **What is public and what is confidential?**

An amendment to the statute governing operation of the board, which became effective on July 1, 2000, protects the confidentiality of complaint or investigative materials. Iowa Code § 272.13. Accordingly, complaints and investigative files are not open records. The Notice of Hearing, which is issued after a probable cause finding, is a public document once filed and delivered to the licensee. Proposed decisions and all final written orders of the board, whether acknowledging local settlement or issued following a hearing are also public records. Because disciplinary hearings conducted by the board under chapter 272 are open, public hearings, witness testimony and exhibits are open to the public unless sealed by the ALJ. The complaint and investigative materials remain confidential unless they become exhibits in an open hearing. Inquiries about a pending case should be referred to the board office.

- **What options are available to a party who is dissatisfied with a final decision issued by the board?**

Two avenues exist by which a party may seek review of a final decision. First, either party may file a application for rehearing with the board. The application may request reconsideration of all or part of the board decision based upon the existing record or may request an opportunity to present additional evidence. 282 IAC 11.29. Second, a party who is aggrieved by a final decision of the board may seek judicial review of the decision by filing a petition in district court. The court will conduct a review of the case based upon the record compiled before the agency and may not receive or consider additional evidence. Iowa Code § 17A.19.

- **What is the process for reinstatement of a suspended license?**

An applicant whose license has been suspended may apply for reinstatement when in accordance with the terms and conditions of the order of suspension. Applications for reinstatement are presented to the board for consideration. The burden is on the practitioner to establish the all conditions imposed by the board in the initial suspension order have been satisfied and that it will be in the public interest to lift the suspension. Following consideration of the application, an order must be issued explaining the board's reasons for granting or denying the application. 282 IAC 34.

CHAPTER 11
COMPLAINTS, INVESTIGATIONS,
CONTESTED CASE HEARINGS

[Prior to 6/15/88, see Professional Teaching Practices Commission[640] Ch 2]

[Prior to 5/16/90, see Professional Teaching Practices Commission[287] Ch 2]

282—11.1(17A,272) Scope and applicability. This chapter applies to contested case proceedings conducted by the board of educational examiners.

282—11.2(17A) Definitions. Except where otherwise specifically defined by law:

“*Board*” means the board of educational examiners.

“*Complainant*” means any qualified party who files a complaint with the board.

“*Contested case*” means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under 1998 Iowa Acts, chapter 1202, section 14.

“*Issuance*” means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

“*Party*” means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

“*Presiding officer*” means an administrative law judge from the Iowa department of inspections and appeals or the full board or a three-member panel of the board.

“*Proposed decision*” means the presiding officer’s recommended findings of fact, conclusions of law, decision, and order in a contested case in which the full board did not preside.

“*Respondent*” means any individual who is charged in a complaint with violating the criteria of professional practices or the criteria of competent performance.

282—11.3(17A,272) Jurisdictional requirements.

11.3(1) The case must relate to alleged violation of the criteria of professional practices or the criteria of competent performance.

11.3(2) The magnitude of the alleged violation must be adequate to warrant a hearing by the board.

11.3(3) There must be sufficient evidence to support the complaint.

11.3(4) The complaint must be filed by a person who has personal knowledge of an alleged violation and must include a concise statement of facts which clearly and specifically apprises the respondent of the details of the allegation(s).

11.3(5) The complaint must be filed within three years of the occurrence of the conduct upon which it is based or discovery of the conduct by the complainant unless good cause can be shown for extension of this limitation.

11.3(6) The jurisdictional requirements must be met on the face of the complaint before the board may order an investigation of the allegation(s) of the complaint.

11.3(7) As an additional factor, it should appear that a reasonable effort has been made to resolve the problem on the local level. However, the absence of such an effort shall not preclude investigation by the board.

282—11.4(17A,272) Complaint.

11.4(1) *Who may initiate.* The following entities may initiate a complaint:

a. Licensed practitioners employed by a school district or their educational entity or their recognized local or state professional organization.

b. Local boards of education.

c. Parents or guardians of students involved in the alleged complaint.

d. The executive director of the board of educational examiners if the following circumstances have been met:

(1) The executive director receives information that a practitioner:

1. Has been convicted of a felony criminal offense, or a misdemeanor criminal offense wherein the victim of the crime was 18 years of age or younger, and the executive director expressly determines

within the complaint that the nature of the offense clearly and directly impacts the practitioner's fitness or ability to retain the specific license(s) or authorization(s) which the practitioner holds; or

2. Has been the subject of a founded report of child abuse placed upon the central registry maintained by the department of human services pursuant to Iowa Code section 232.71D and the executive director expressly determines within the complaint that the nature of the offense clearly and directly impacts the practitioner's fitness or ability to retain the specific license(s) or authorization(s) which the practitioner holds; or

3. Has not met a reporting requirement stipulated by Iowa Code section 272.15 as amended by 2007 Iowa Acts, Senate File 588, section 33, Iowa Code section 279.43, 281—subrule 102.11(2), 282—Chapter 11, or 282—Chapter 25; or

4. Has falsified a license or authorization issued by the board; or

5. Has submitted false information on a license or authorization application filed with the board; or

6. Does not hold the appropriate license for the assignment for which the practitioner is currently employed; or

7. Has assigned another practitioner to perform services for which the practitioner is not properly licensed; and

(2) The executive director verifies the information or the alleged misconduct through review of official records maintained by a court, the department of human services registry of founded child abuse reports, the practitioner licensing authority of another state, the department of education, the local school district, area education agency, or authorities in charge of the nonpublic school, or the executive director is presented with the falsified license; and

(3) No other complaint has been filed.

e. The department of transportation if the licensee named in the complaint holds a behind-the-wheel instructor's certification issued by the department and the complaint relates to an incident or incidents arising during the course of driver's education instruction.

f. An employee of the department of education who, while performing official duties, becomes aware of any alleged misconduct by an individual licensed under Iowa Code section 272.2.

11.4(2) Form and content of the complaint.

a. The complaint shall be in writing and signed by at least one complainant who has personal knowledge of an alleged violation of the board's rules or related state law or an authorized representative if the complainant is an organization. (An official form may be used. This form may be obtained from the board upon request.)

b. The complaint shall show venue as "BEFORE THE BOARD OF EDUCATIONAL EXAMINERS" and shall be captioned "COMPLAINT."

c. The complaint shall contain the following information:

(1) The full name, address and telephone number of the complainant.

(2) The full name, address and telephone number, if known, of the respondent.

(3) A concise statement of the facts which clearly and specifically apprises the respondent of the details of the alleged violation of the criteria of professional practices or the criteria of competent performance and the relief sought by the complainant.

(4) An explanation of the basis of the complainant's personal knowledge of the facts underlying the complaint.

(5) A citation to the specific rule or law which the complainant alleges has been violated.

11.4(3) Required copies—place and time of filing the complaint.

a. A copy of the complaint must be filed with the board.

b. The complaint must be delivered personally or by mail to the office of the board. The current office address is the Grimes State Office Building, Third Floor, Des Moines, Iowa 50319-0147.

c. Timely filing is required in order to ensure the availability of witnesses and to avoid initiation of an investigation under conditions which may have been significantly altered during the period of delay. The conduct upon which it is based must have occurred or been discovered by the complainant within three years of filing of the complaint unless good cause is shown for an extension of this limitation.

11.4(4) *Amendment or withdrawal of complaint.* A complaint or any specification thereof may be amended or withdrawn by the complainant at any time. The parties to a complaint may mutually agree to the resolution of the complaint at any time in the proceeding prior to issuance of a final order by the board. The resolution must be committed to a written agreement and filed with the board. The agreement is not subject to approval by the board, but shall be acknowledged by the board and may be incorporated into an order of the board.

11.4(5) *Respondent entitled to copy of the complaint.* Immediately upon the board's determination that jurisdictional requirements have been met, the respondent shall be provided a copy of the complaint or amended complaint and any supporting documents attached to the complaint at the time of filing.

11.4(6) *Voluntary surrender of license—agreement to accept lesser sanction.* A practitioner may voluntarily surrender the practitioner's license or agree to accept a lesser sanction from the board prior to or after the filing of a complaint with the board without admitting the truth of the allegations of the complaint if a complaint is on file with the board. In order to voluntarily surrender a license or submit to a sanction, the practitioner must waive the right to hearing before the board and notify the board of the intent to surrender or accept sanction. The board may issue an order permanently revoking the practitioner's license if it is surrendered, or implementing the agreed upon sanction. The board may decline to issue an agreed upon sanction if, in the board's judgment, the agreed upon sanction is not appropriate for the circumstances of the case.

11.4(7) *Investigation of license reports.*

a. Reports received by the board from another state, territory or other jurisdiction concerning licenses or certificate revocation or suspension shall be reviewed and investigated by the board in the same manner as is prescribed in these rules for the review and investigation of written complaints.

b. Failure to report a license revocation, suspension or other disciplinary action taken by licensing authority of another state, territory or jurisdiction within 30 days of the final action by such licensing authority shall constitute cause for initiation of an investigation.

11.4(8) *Timely resolution of complaints.* Complaints filed with the board must be resolved within 180 days unless good cause can be shown for an extension of this limitation. The board will provide notice to the parties to a complaint prior to taking action to extend this time limitation upon its own motion.

11.4(9) *Confidentiality.* All complaint files, investigation files, other investigation reports, and other investigation information in the possession of the board or its employees or agents, which relate to licensee discipline, are privileged and confidential, and are not subject to discovery, subpoena, or other means of legal compulsion for their release to a person other than the respondent and the board and its employees and agents involved in licensee discipline, and are not admissible in evidence in a judicial or administrative proceeding other than the proceeding involving licensee discipline. However, investigative information in the possession of the board or its employees or agents which is related to licensee discipline may be disclosed to appropriate licensing authorities within this state, the appropriate licensing authorities in another state, the District of Columbia, or a territory or country in which the licensee is licensed or has applied for a license. A final written decision and finding of fact by the board in a disciplinary proceeding is a public record.

[ARC 8406B, IAB 12/16/09, effective 1/20/10 (See Delay note at end of chapter); ARC 8823B, IAB 6/2/10, effective 5/14/10]

282—11.5(272) Investigation of complaints or license reports. The chairperson of the board or the chairperson's designee may request an investigator to investigate the complaint or report received by the board from another state, territory or other jurisdiction concerning license or certificate revocation or suspension pursuant to subrule 11.4(7); providing that the jurisdictional requirements have been met on the face of the complaint. The investigation shall be limited to the allegations contained on the face of the complaint. The investigator may consult an assistant attorney general concerning the investigation or evidence produced from the investigation. Upon completion of the investigation, the investigator shall prepare a report of the investigation for consideration by the board in determining whether probable cause exists.

282—11.6(272) Ruling on the initial inquiry. Upon review of the investigator's report, the board may take any of the following actions:

11.6(1) *Reject the case.* If a determination is made by the board to reject the case, the complaint shall be returned to the complainant along with a statement specifying the reasons for rejection. A letter of explanation concerning the decision of the board shall be sent to the respondent.

11.6(2) *Require further inquiry.* If determination is made by the board to order further inquiry, the complaint and recommendations by the investigator(s) shall be returned to the investigator(s) along with a statement specifying the information deemed necessary.

11.6(3) *Accept the case.* If a determination is made by the board that probable cause exists to conclude that the criteria of professional practices or the criteria of competent performance have been violated, notice shall be issued, pursuant to rule 282—11.7(17A,272), and a formal hearing shall be conducted in accordance with rules 282—11.7(17A,272) to 282—11.21(17A,272), unless a voluntary waiver of hearing has been filed by the respondent pursuant to the provisions of subrule 11.4(6).

11.6(4) *Release of investigative report.* If the board finds probable cause of a violation, the investigative report will be available to the respondent upon request. Information contained within the report is confidential and may be used only in connection with the disciplinary proceedings before the board.

282—11.7(17A,272) Notice of hearing.

11.7(1) *Delivery.* Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

- a. Personal service as provided in the Iowa Rules of Civil Procedure; or
- b. Certified mail, return receipt requested; or
- c. First-class mail; or
- d. Publication, as provided in the Iowa Rules of Civil Procedure.

11.7(2) *Contents.* The notice of hearing shall contain the following information:

- a. A statement of the time, date, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matter asserted;
- e. Identification of all parties including the name, address and telephone numbers of counsel representing each of the parties where known;
- f. Reference to the procedural rules governing conduct of the contested case proceeding;
- g. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer; and
- h. Notification of the time period in which a party may request, pursuant to Iowa Code section 17A.11 and rule 282—11.8(17A,272), that the presiding officer be an administrative law judge.

282—11.8(17A,272) Presiding officer.

11.8(1) Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer as the board.

11.8(2) The board may deny the request only upon a finding that one or more of the following apply:

- a. Neither the board nor any officer of the board under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

- b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

- c. An administrative law judge with the qualifications identified in subrule 11.8(4) is unavailable to hear the case within a reasonable time.

- d. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

- e.* The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.
- f.* Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.
- g.* The request was not timely filed.
- h.* The request is not consistent with a specified statute.

11.8(3) The board shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge with the qualifications identified in subrule 11.8(4), the parties shall be notified at least 10 days prior to hearing if a qualified administrative law judge will not be available.

11.8(4) An administrative law judge assigned to act as presiding officer in a contested case shall have the following technical expertness unless waived by the board:

- a.* A J.D. degree.
- b.* Additional criteria may be added by the board.

11.8(5) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the board. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

11.8(6) Unless otherwise provided by law, the board, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

282—11.9(17A,272) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the board in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

282—11.10(17A,272) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

282—11.11(17A,272) Disqualification.

11.11(1) A presiding officer or board member shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a.* Has a personal bias or prejudice concerning a party or a representative of a party;
- b.* Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c.* Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d.* Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e.* Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f.* Has a spouse or relative within the third degree of relationship that: (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or
- g.* Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

11.11(2) The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does

not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19, and subrules 11.11(3) and 11.24(9).

11.11(3) In a situation where a presiding officer or board member knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

11.11(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 11.11(1), the party shall file a motion supported by an affidavit pursuant to 1998 Iowa Acts, chapter 1202, section 19(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

If the presiding officer determines that disqualification is appropriate, the presiding officer or board member shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 282—11.26(17A,272) and seek a stay under rule 282—11.30(17A,272).

282—11.12(17A,272) Consolidation—severance.

11.12(1) Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where: (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

11.12(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

282—11.13(17A,272) Pleadings.

11.13(1) Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

11.13(2) Answer. An answer shall be filed within 20 days of service of the notice of hearing unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the notice of hearing to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any.

Any allegation in the notice of hearing not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

11.13(3) Amendment. Notices of hearing and answers may be amended with the consent of the parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

282—11.14(17A,272) Service and filing of pleadings and other papers.

11.14(1) Service—when required. Except where otherwise provided by law, every document filed in a contested case proceeding shall be served upon each of the parties of record to the proceeding, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing

as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

11.14(2) Service—how made. Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

11.14(3) Filing—when required. After the notice of hearing, all documents in a contested case proceeding shall be filed with the Board of Educational Examiners, Grimes State Office Building, Des Moines, Iowa 50319-0147. All documents that are required to be served upon a party shall be filed simultaneously with the board.

11.14(4) Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

11.14(5) Proof of mailing. Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date)

(Signature)

282—11.15(17A,272) Discovery.

11.15(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

11.15(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 11.15(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

11.15(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible under rule 282—11.22(17A,272). In discovery matters, the parties shall honor the rules of privilege imposed by law.

282—11.16(17A,272) Subpoenas.

11.16(1) Subpoenas. In connection with the investigation set forth in rule 282—11.5(272), the board is authorized by law to subpoena books, papers, records and any other evidence to help it determine whether it should institute a contested case proceeding (hearing). After service of the hearing notification contemplated by rule 282—11.7(17A,272), the following procedures are available to the parties in order to obtain relevant and material evidence:

a. Board subpoenas for books, papers, records, and other evidence will be issued to a party upon request. Such a request must be in writing. Application should be made to the board office specifying the evidence sought. Subpoenas for witnesses may also be obtained.

b. Evidence obtained by subpoena shall be admissible at the hearing if it is otherwise admissible under rule 282—11.22(17A,272). In subpoena matters the parties shall honor the rules of privilege imposed by law.

c. The evidence outlined in Iowa Code section 17A.13(2) where applicable and relevant shall be made available to a party upon request.

d. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

11.16(2) *Motion to quash or modify.* The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

282—11.17(17A,272) Motions.

11.17(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

11.17(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the agency or the presiding officer.

11.17(3) The presiding officer may schedule oral arguments on any motion.

11.17(4) Motions pertaining to the hearing, including motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the agency or an order of the presiding officer.

282—11.18(17A,272) Prehearing conference.

11.18(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be conducted not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the presiding officer to all parties. For good cause the presiding officer may permit variances from this rule.

11.18(2) Each party shall bring to the prehearing conference:

a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

c. Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

11.18(3) In addition to the requirements of subrule 11.18(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters which the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters which will expedite the hearing.

11.18(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

282—11.19(17A,272) Continuances. A party has no automatic right to a continuance or delay of the board's hearing procedure or schedule. However, a party may request a continuance of the presiding officer no later than seven days prior to the date set for hearing. The presiding officer shall have the power to grant continuances. Within seven days of the date set for hearing, no continuances shall be granted except for extraordinary, extenuating or emergency circumstances. In these situations, the presiding officer shall grant continuances after consultation, if needed, with the chairperson of the board, the executive director, or the attorney representing the board. A board member shall not be contacted in person, by mail or telephone by a party seeking a continuance.

282—11.20(17A,272) Intervention.

11.20(1) Motion. A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

11.20(2) When filed. Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

11.20(3) Grounds for intervention. The movant shall demonstrate that: (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

11.20(4) Effect of intervention. If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

282—11.21(17A,272) Hearing procedures.

11.21(1) The presiding officer presides at the hearing and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings. If the presiding officer is the board or a panel thereof, an administrative law judge from the Iowa department of inspections and appeals may be designated to assist the board in conducting proceedings under this chapter. An administrative law judge so designated may rule upon motions and other procedural matters and assist the board in conducting the hearing.

11.21(2) All objections shall be timely made and stated on the record.

11.21(3) Legal representation.

a. The respondent has a right to participate in all hearings or prehearing conferences and may be represented by an attorney or another person authorized by law.

b. The office of the attorney general or an attorney designated by the executive director shall be responsible for prosecuting complaint allegations in all contested case proceedings before the board, except those cases in which the sole allegation involves the failure of a practitioner to fulfill contractual obligations. The assistant attorney general or other designated attorney assigned to prosecute a contested case before the board shall not represent the board or the complainant in that case, but shall represent the public interest.

c. In a case in which the sole allegation involves the failure of a practitioner to fulfill contractual obligations, the person who files the complaint with the board, or the complainant's designee, shall represent the complainant during the contested case proceedings.

11.21(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

11.21(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

11.21(6) Witnesses may be sequestered during the hearing.

11.21(7) The presiding officer shall conduct the hearing in the following manner:

- a.* The presiding officer shall give an opening statement briefly describing the nature of the proceedings;
- b.* The parties shall be given an opportunity to present opening statements;
- c.* Parties shall present their cases in the sequence determined by the presiding officer;
- d.* Each witness shall be sworn or affirmed by the presiding officer or the court reporter and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;
- e.* When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

282—11.22(17A,272) Evidence.

11.22(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

11.22(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

11.22(3) Evidence in the proceeding shall be confined to the issues concerning allegations raised on the face of the complaint as to which the parties received notice prior to the hearing.

11.22(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

11.22(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

11.22(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

282—11.23(17A,272) Default.

11.23(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

11.23(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

11.23(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 282—11.28(17A,272). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

11.23(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

11.23(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to

the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

11.23(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 236.

11.23(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 282—11.26(17A,272).

11.23(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

11.23(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues (but, unless the defaulting party has appeared, it cannot exceed the relief demanded).

11.23(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 282—11.30(17A,272).

282—11.24(17A,272) Ex parte communication.

11.24(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the board or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 11.11(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

11.24(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

11.24(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

11.24(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 282—11.13(17A,272) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

11.24(5) Board members acting as presiding officers may communicate with each other without notice or opportunity for parties to participate.

11.24(6) The executive director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 11.24(1).

11.24(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 282—11.19(17A,272).

11.24(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the

communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order (or disclosed). If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

11.24(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

11.24(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the department. Violation of ex parte communication prohibitions by department personnel shall be reported to (agency to designate person to whom violations should be reported) for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

282—11.25(17A,272) Recording costs. Upon request, the board shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

282—11.26(17A,272) Interlocutory appeals. Upon written request of a party or on its own motion, the board may review an interlocutory order of the presiding officer. In determining whether to do so, the board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the board at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

282—11.27(17A,272) Final decision.

11.27(1) When the board presides over the reception of evidence at the hearing, its decision is a final decision.

11.27(2) When the board does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the board without further proceedings unless there is an appeal to, or review on motion of, the board within the time provided in rule 282—11.28(17A,272).

282—11.28(17A,272) Appeals and review.

11.28(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the board within 30 days after issuance of the proposed decision.

11.28(2) *Review.* The board may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

11.28(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the board. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- a. The parties initiating the appeal;
- b. The proposed decision or order appealed from;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought;
- e. The grounds for relief.

11.28(4) Requests to present additional evidence. A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

11.28(5) Scheduling. The board shall issue a schedule for consideration of the appeal.

11.28(6) Briefs and arguments. Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs.

The board may resolve the appeal on the briefs or provide an opportunity for oral argument. The board may shorten or extend the briefing period as appropriate.

282—11.29(17A,272) Applications for rehearing.

11.29(1) By whom filed. Any party to a contested case proceeding may file an application for rehearing from a final order.

11.29(2) Content of application. The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the board decision on the existing record and whether, on the basis of the grounds enumerated in subrule 11.28(4), the applicant requests an opportunity to submit additional evidence.

11.29(3) Time of filing. The application shall be filed with the board within 20 days after issuance of the final decision.

11.29(4) Notice to other parties. A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the board shall serve copies on all parties.

11.29(5) Disposition. Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.

282—11.30(17A,272) Stays of board actions.

11.30(1) When available.

a. Any party to a contested case proceeding may petition the board for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the board. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The executive director may rule on the stay or authorize the presiding officer to do so.

b. Any party to a contested case proceeding may petition the board for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

11.30(2) When granted. In determining whether to grant a stay, the executive director or presiding officer shall consider the factors listed in 1998 Iowa Acts, chapter 1202, section 23(5c).

11.30(3) Vacation. A stay may be vacated by the issuing authority upon application of the board or any other party.

282—11.31(17A,272) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

282—11.32(17A,272) Emergency adjudicative proceedings.

11.32(1) Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the Constitution and other provisions of law, the board may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the board by emergency adjudicative order. Before issuing an emergency adjudicative order the board shall consider factors including, but not limited to, the following:

- a. Whether there has been a sufficient factual investigation to ensure that the board is proceeding on the basis of reliable information;
- b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;
- c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;
- d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and
- e. Whether the specific action contemplated by the board is necessary to avoid the immediate danger.

11.32(2) Issuance of order.

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the board's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

- (1) Personal delivery;
- (2) Certified mail, return receipt requested, to the last address on file with the board;
- (3) Certified mail to the last address on file with the board;
- (4) First-class mail to the last address on file with the board; or
- (5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that board orders be sent by fax and has provided a fax number for that purpose.

c. To the degree practicable, the board shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

11.32(3) Oral notice. Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the board shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

11.32(4) Completion of proceedings. After the issuance of an emergency adjudicative order, the board shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which board proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further board proceedings to a later date will be granted only in compelling circumstances upon application in writing.

282—11.33(272) Methods of discipline. The board has the authority to impose the following disciplinary sanctions:

1. Revoke a practitioner's license, certificate or authorization.
2. Suspend a practitioner's license, certificate or authorization until further order of the board or for a specific period.
3. Prohibit permanently, until further order of the board, or for a specific period, a practitioner from engaging in specified practices, methods, or acts.
4. Require additional education or training.
5. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.
6. Issue a public letter of reprimand.
7. Order any other resolution appropriate to the circumstances of the case.

282—11.34(272) Reinstatement. Any person whose license, certificate or authorization to practice has been suspended may apply to the board for reinstatement in accordance with the terms and conditions of the order of the suspension.

11.34(1) All proceedings for reinstatement shall be initiated by the respondent, who shall file with the board an application for reinstatement. Such application shall be docketed in the original case in which the license, certificate or authorization was suspended. All proceedings upon the application for reinstatement shall be subject to the same rules of procedure as other cases before the board.

11.34(2) An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the suspension of the respondent's license, certificate or authorization no longer exists and that it will be in the public interest for the license, certificate or authorization to be reinstated. The burden of proof to establish such facts shall be on the respondent.

11.34(3) An order denying or granting reinstatement shall be based upon a decision which incorporates findings of fact and conclusions of law.

282—11.35(272) Application denial and appeal. The executive director is authorized by Iowa Code section 272.7 to grant or deny applications for licensure. If the executive director denies an application for an initial or exchange license, certificate, or authorization, the executive director shall send to the applicant by regular first-class mail written notice identifying the factual and legal basis for denying the application. If the executive director denies an application to renew an existing license, certificate, or authorization, the provisions of rule 282—11.36(272) shall apply.

11.35(1) Mandatory grounds for license denial. The executive director shall deny an application based on the grounds set forth in Iowa Code section 272.2(14), including:

- a. The license application is fraudulent.
- b. The applicant's license or certification from another state is suspended or revoked.
- c. The applicant fails to meet board standards for application or for license renewal.
- d. The applicant is less than 21 years of age, except that a coaching authorization or paraeducator certificate may be issued to an applicant who is 18 years of age or older, as provided in Iowa Code sections 272.12 and 272.31. A student enrolled in a practitioner preparation program who meets board requirements for a temporary, limited purpose license and who is seeking to teach as part of the practicum or internship may be less than 21 years of age.
- e. The applicant has been convicted of one of the disqualifying criminal convictions set forth in paragraph 11.35(2) "a."

11.35(2) Conviction of a crime and founded child abuse.

a. *Disqualifying criminal convictions.* The board shall deny an application for licensure if the applicant or licensee has been convicted, has pled guilty to, or has been found guilty of the following criminal offenses, regardless of whether the judgment of conviction or sentence was deferred:

- (1) Any of the following forcible felonies included in Iowa Code section 702.11: child endangerment, assault, murder, sexual abuse, or kidnapping;

(2) Any of the following criminal sexual offenses, as provided in Iowa Code chapter 709, involving a child:

1. First-, second- or third-degree sexual abuse committed on or with a person who is under the age of 18;
 2. Lascivious acts with a child;
 3. Assault with intent to commit sexual abuse;
 4. Indecent contact with a child;
 5. Sexual exploitation by a counselor; or
 6. Lascivious conduct with a minor;
- (3) Incest involving a child as prohibited by Iowa Code section 726.2;
- (4) Dissemination and exhibition of obscene material to minors as prohibited by Iowa Code section 728.2; or
- (5) Telephone dissemination of obscene material to minors as prohibited by Iowa Code section 728.15.

b. Other criminal convictions and founded child abuse. When determining whether a person should be denied licensure based on the conviction of any other crime, including a felony, or a founded report of child abuse, the executive director and the board shall consider the following:

- (1) The nature and seriousness of the crime or founded abuse in relation to the position sought;
- (2) The time elapsed since the crime or founded abuse was committed;
- (3) The degree of rehabilitation which has taken place since the crime or founded abuse was committed;
- (4) The likelihood that the person will commit the same crime or abuse again;
- (5) The number of criminal convictions or founded abuses committed; and
- (6) Such additional factors as may in a particular case demonstrate mitigating circumstances or heightened risk to public safety.

11.35(3) *Fraudulent applications.* An application shall be considered fraudulent pursuant to Iowa Code section 272.6(4) if it contains any false representation of a material fact or any omission of a material fact which should have been disclosed at the time of application for licensure or is submitted with a false or forged diploma, certificate, affidavit, identification, or other document material to the applicant's qualification for licensure or material to any of the grounds for denial set forth in Iowa Code sections 272.2(14) and 272.6.

11.35(4) *Appeal procedure.*

a. An applicant who is aggrieved by the denial of an application for licensure and who desires to challenge the decision of the executive director must appeal the decision and request a hearing before the board within 30 calendar days of the date the notice of license denial is mailed. An appeal and request for hearing must be in writing and is deemed made on the date of the United States Postal Service nonmetered postmark or the date of personal service to the board office. The request for hearing shall specify the factual or legal errors the applicant contends were made by the executive director, must identify any factual disputes upon which the applicant desires an evidentiary hearing, and may provide additional written information or documents in support of licensure. If a request for hearing is timely made, the executive director shall promptly issue a notice of contested case hearing on the grounds asserted by the applicant.

b. The board, in its discretion, may act as presiding officer at the contested case hearing, may hold the hearing before a panel of three board members, or may request that an administrative law judge act as presiding officer. The applicant may request that an administrative law judge act as presiding officer and render a proposed decision pursuant to rule 282—11.8(17A,272). A proposed decision by a panel of board members or an administrative law judge is subject to appeal or review by the board pursuant to rule 282—11.28(17A,272).

c. Hearings concerning licensure denial shall be conducted according to the contested case procedural rules in this chapter. Evidence supporting the denial of the license may be presented by an assistant attorney general. While each party shall have the burden of establishing the affirmative

of matters asserted, the applicant shall have the ultimate burden of persuasion as to the applicant's qualification for licensure.

d. On appeal, the board may grant or deny the application for licensure. If the application for licensure is denied, the board shall state the reason or reasons for the denial and may state conditions under which the application could be granted, if applicable.

11.35(5) *Judicial review.* Judicial review of a final order of the board denying licensure may be sought in accordance with the provisions of Iowa Code section 17A.19 which are applicable to judicial review of an agency's final decision in a contested case. In order to exhaust administrative remedies, an applicant aggrieved by the executive director's denial of an application for licensure must timely appeal the adverse decision to the board.

[ARC 9209B, IAB 11/3/10, effective 12/8/10]

282—11.36(272) Denial of renewal application. If the executive director denies an application to renew a license, certificate or authorization, a notice of hearing shall be issued to commence a contested case proceeding. The executive director may deny a renewal application on the same grounds as those that apply to an application for initial or exchange licensure described in subrules 11.35(1) to 11.35(3).

11.36(1) *Hearing procedure.* Hearings on denial of an application to renew a license shall be conducted according to the contested case procedural rules in this chapter. Evidence supporting the denial of the license may be presented by an assistant attorney general. The provisions of subrules 11.35(4) and 11.35(5) shall apply.

11.36(2) *Judicial review.* Judicial review of a final order of the board denying renewal of licensure may be sought in accordance with the provisions of Iowa Code section 17A.19 which are applicable to judicial review of an agency's final decision in a contested case.

11.36(3) *Impact of denial of renewal application.* Pursuant to Iowa Code section 17A.18(2), if the licensee has made timely and sufficient application for renewal, an existing license shall not expire until the last day for seeking judicial review of the board's final order denying the application or a later date fixed by order of the board or reviewing court.

11.36(4) *Timeliness of renewal application.* Within the meaning of Iowa Code section 17A.18(2), a timely and sufficient renewal application shall be:

- a.* Received by the board on or before the date the license is set to expire or lapse;
- b.* Signed by the licensee if submitted in paper form or certified as accurate if submitted electronically;
- c.* Fully completed; and
- d.* Accompanied by the proper fee. The fee shall be deemed improper if the amount is incorrect, the fee was not included with the application, or the licensee's check is unsigned or returned for insufficient funds.

282—11.37(272) Mandatory reporting of contract nonrenewal or termination or resignation based on allegations of misconduct. The board of directors of a school district or area education agency, the superintendent of a school district or the chief administrator of an area education agency, and the authorities in charge of a nonpublic school shall report to the board the nonrenewal or termination, for reasons of alleged or actual misconduct, of a person's contract executed under Iowa Code sections 279.12, 279.13, 279.15 through 279.21, 279.23, and 279.24, and the resignation of a person who holds a license, certificate, or authorization issued by the board as a result of or following an incident or allegation of misconduct that, if proven, would constitute a violation of 282—subparagraph 25.3(1) "b"(1), when the board or reporting official has a good-faith belief that the incident occurred or the allegation is true.

11.37(1) *Method of reporting.* The report required by this rule may be made by completion and filing of the complaint form described in subrule 11.4(2) or by the submission of a letter to the executive director of the board which includes: the full name, address, telephone number, title and signature of the reporter; the full name, address, and telephone number of the person who holds a license, certificate or authorization issued by the board; a concise statement of the circumstances under which the termination,

nonrenewal, or resignation occurred; and any additional information or documentation which the reporter believes will be relevant to assessment of the report pursuant to subrule 11.37(4).

11.37(2) *Timely reporting required.* The report required by this rule shall be filed within 60 days of the date of local board action on the termination or resignation.

11.37(3) *Confidentiality of report.* Information reported to the board in accordance with this rule is privileged and confidential, and, except as provided in Iowa Code section 272.13, is not subject to discovery, subpoena, or other means of legal compulsion for its release to a person other than the respondent and the board and its employees and agents involved in licensee discipline, and is not admissible in evidence in a judicial or administrative proceeding other than the proceeding involving licensee discipline.

11.37(4) *Action upon receipt of report.*

a. Upon receipt of a report under this rule, the executive director of the board shall review the information reported to determine whether a complaint investigation should be initiated.

b. In making this determination, the executive director shall consider the nature and seriousness of the reported misconduct in relation to the position sought or held, the time elapsed since the misconduct, the degree of rehabilitation, the likelihood that the individual will commit the same misconduct again, and the number of reported incidents of misconduct.

c. If the executive director determines a complaint should not be initiated, no further formal action will be taken and the matter will be closed.

d. If the executive director determines a complaint investigation should be initiated, the executive director shall assign the matter for investigation pursuant to rule 282—11.5(272).

11.37(5) *Proceedings upon investigation.* From the time of initiation of an investigation, the matter will be processed in the same manner as a complaint filed under rule 282—11.4(17A,272).

282—11.38(256,272) Reporting by department of education employees.

11.38(1) *Method of reporting.* A report of misconduct made by the director, pursuant to Iowa Code Supplement section 256.9(56), or made by an employee of the department of education, pursuant to Iowa Code Supplement section 272.15(2), shall comply with the requirements of subrule 11.37(1).

11.38(2) *Confidentiality.* Information reported to the board in accordance with this rule is privileged and confidential, except as provided in Iowa Code section 272.13.

11.38(3) *Review and investigation of report.* The report shall be reviewed and investigated pursuant to subrules 11.37(4) and 11.37(5).

These rules are intended to implement Iowa Code chapters 17A and 272.

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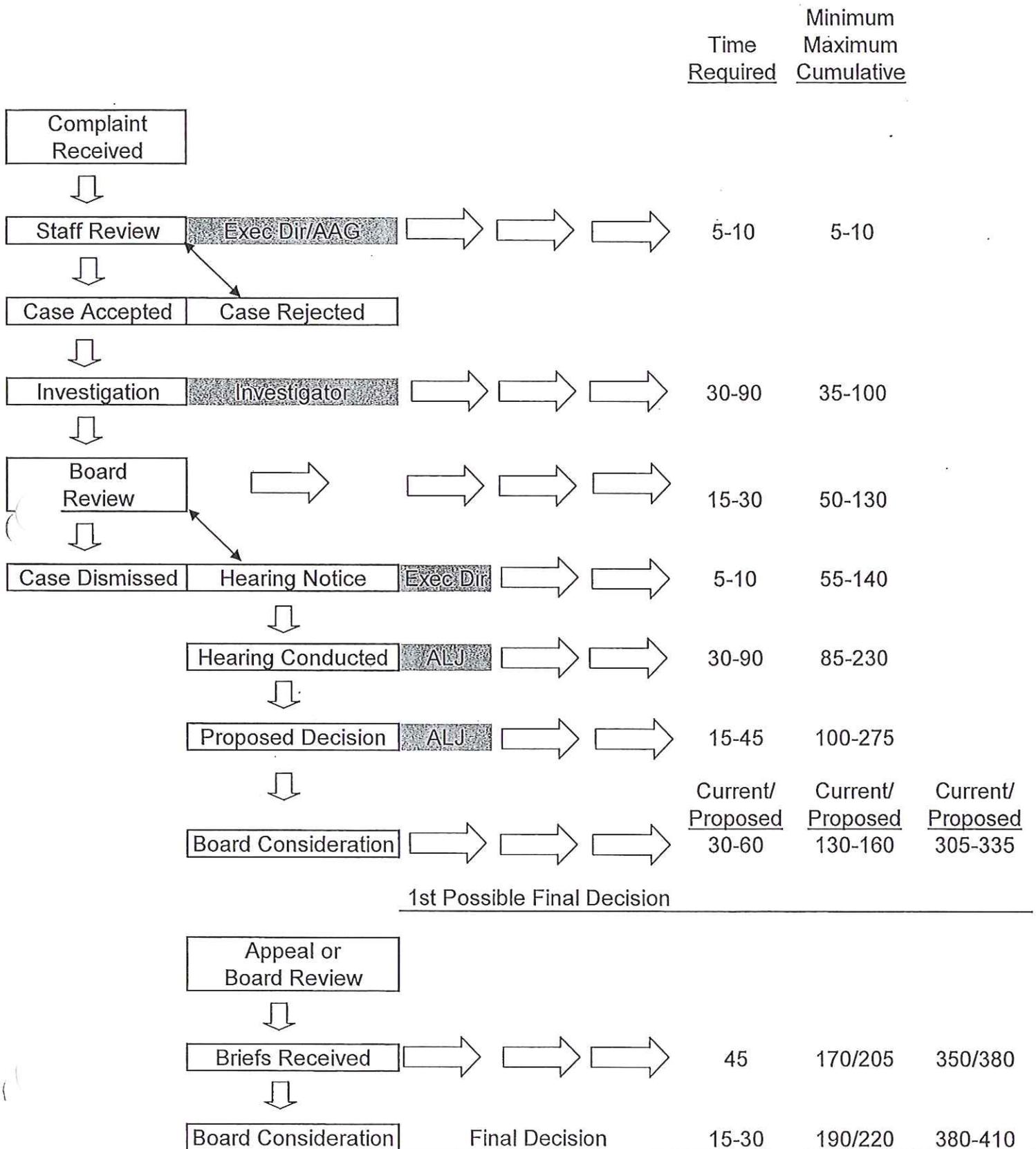
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- ¹ Effective date of 282—Ch 11 delayed 45 days by the Administrative Rules Review Committee at its meeting held March 10, 2000; delay lifted by the Committee at its meeting held April 7, 2000, effective April 8, 2000.
- ² Two ARCs
- ³ Effective date of ARC 8406B delayed until the adjournment of the 2010 Session of the General Assembly by the Administrative Rules Review Committee at its meeting held January 5, 2010.

Timeline for Resolution of Complaints



CHAPTER 25
CODE OF PROFESSIONAL CONDUCT AND ETHICS

282—25.1(272) Scope of standards. This code of professional conduct and ethics constitutes mandatory minimum standards of practice for all licensed practitioners as defined in Iowa Code chapter 272. The adherence to certain professional and ethical standards is essential to maintaining the integrity of the education profession.

282—25.2(272) Definitions. Except where otherwise specifically defined by law:

“*Administrative and supervisory personnel*” means any licensed employee such as superintendent, associate superintendent, assistant superintendent, principal, associate principal, assistant principal, or other person who does not have as a primary duty the instruction of pupils in the schools.

“*Board*” means the Iowa board of educational examiners.

“*Discipline*” means the process of sanctioning a license, certificate or authorization issued by the board.

“*Ethics*” means a set of principles governing the conduct of all persons governed by these rules.

“*Fraud*” means knowingly providing false information or representations on an application for licensure or employment, or knowingly providing false information or representations made in connection with the discharge of duties.

“*License*” means any license, certificate, or authorization granted by the board.

“*Licensee*” means any person holding a license, certificate, or authorization granted by the board.

“*Practitioner*” means an administrator, teacher, or other licensed professional, including an individual who holds a statement of professional recognition, who provides educational assistance to students.

“*Responsibility*” means a duty for which a person is accountable by virtue of licensure.

“*Right*” means a power, privilege, or immunity secured to a person by law.

“*Student*” means a person, regardless of age, enrolled in a prekindergarten through grade 12 school, who is receiving direct or indirect assistance from a person licensed by the board.

“*Teacher*” means any person engaged in the instructional program for prekindergarten through grade 12 children, including a person engaged in teaching, administration, and supervision, and who is required by law to be licensed for the position held.

[ARC 7979B, IAB 7/29/09, effective 9/2/09]

282—25.3(272) Standards of professional conduct and ethics. Licensees are required to abide by all federal, state, and local laws applicable to the fulfillment of professional obligations. Violation of federal, state, or local laws in the fulfillment of professional obligations constitutes unprofessional and unethical conduct which can result in disciplinary action by the board. In addition, it is hereby deemed unprofessional and unethical for any licensee to violate any of the following standards of professional conduct and ethics:

25.3(1) Standard I—conviction of crimes, sexual or other immoral conduct with or toward a student, and child and dependent adult abuse. Violation of this standard includes:

a. *Fraud.* Fraud means the same as defined in rule 282—25.2(272).

b. *Criminal convictions.* The commission of or conviction for a criminal offense as defined by Iowa law or the laws of any other state or of the United States, provided that the offense is relevant to or affects teaching or administrative performance.

(1) Disqualifying criminal convictions. The board shall deny an application for licensure and shall revoke a previously issued license if the applicant or licensee has, on or after July 1, 2002, been convicted of, has pled guilty to, or has been found guilty of the following criminal offenses, regardless of whether the judgment of conviction or sentence was deferred:

1. Any of the following forcible felonies included in Iowa Code section 702.11: child endangerment, assault, murder, sexual abuse, or kidnapping;

2. Any of the following criminal sexual offenses, as provided in Iowa Code chapter 709, involving a child:

- First-, second- or third-degree sexual abuse committed on or with a person who is under the age of 18;
 - Lascivious acts with a child;
 - Assault with intent to commit sexual abuse;
 - Indecent contact with a child;
 - Sexual exploitation by a counselor;
 - Lascivious conduct with a minor; or
 - Sexual exploitation by a school employee;
3. Incest involving a child as prohibited by Iowa Code section 726.2;
4. Dissemination and exhibition of obscene material to minors as prohibited by Iowa Code section 728.2; or
5. Telephone dissemination of obscene material to minors as prohibited by Iowa Code section 728.15.

(2) Other criminal convictions and founded child abuse. In determining whether a person should be denied a license or whether a licensee should be disciplined based upon any other criminal conviction, including a conviction for an offense listed in 25.3(1)“b”(1) which occurred before July 1, 2002, or a founded report of abuse of a child, the board shall consider:

1. The nature and seriousness of the crime or founded abuse in relation to the position sought;
2. The time elapsed since the crime or founded abuse was committed;
3. The degree of rehabilitation which has taken place since the crime or founded abuse was committed;
4. The likelihood that the person will commit the same crime or abuse again;
5. The number of criminal convictions or founded abuses committed; and
6. Such additional factors as may in a particular case demonstrate mitigating circumstances or heightened risk to public safety.

c. Sexual involvement or indecent contact with a student. Sexual involvement includes, but is not limited to, the following acts, whether consensual or nonconsensual: fondling or touching the inner thigh, groin, buttocks, anus or breasts of a student; permitting or causing to fondle or touch the practitioner’s inner thigh, groin, buttocks, anus, or breasts; or the commission of any sex act as defined in Iowa Code section 702.17.

d. Sexual exploitation of a minor. The commission of or any conviction for an offense prohibited by Iowa Code section 728.12, Iowa Code chapter 709 or 18 U.S.C. Section 2252A(a)(5)(B).

e. Student abuse. Licensees shall maintain professional relationships with all students, both inside and outside the classroom. The following acts or behavior constitutes unethical conduct without regard to the existence of a criminal charge or conviction:

- (1) Committing any act of physical abuse of a student;
 - (2) Committing any act of dependent adult abuse on a dependent adult student;
 - (3) Committing or soliciting any sexual or otherwise indecent act with a student or any minor;
 - (4) Soliciting, encouraging, or consummating a romantic or otherwise inappropriate relationship with a student;
 - (5) Furnishing alcohol or illegal or unauthorized drugs or drug paraphernalia to any student or knowingly allowing a student to consume alcohol or illegal or unauthorized drugs in the presence of the licensee; or
 - (6) Failing to report any suspected act of child or dependent adult abuse as required by state law.
- 25.3(2) Standard II—alcohol or drug abuse.** Violation of this standard includes:
- a.* Being on school premises or at a school-sponsored activity involving students while under the influence of, possessing, using, or consuming illegal or unauthorized drugs or abusing legal drugs.
 - b.* Being on school premises or at a school-sponsored activity involving students while under the influence of, possessing, using, or consuming alcohol.

25.3(3) Standard III—misrepresentation, falsification of information. Violation of this standard includes:

a. Falsifying or deliberately misrepresenting or omitting material information regarding professional qualifications, criminal history, college credit, staff development credit, degrees, academic award, or employment history when applying for employment or licensure.

b. Falsifying or deliberately misrepresenting or omitting material information regarding compliance reports submitted to federal, state, and other governmental agencies.

c. Falsifying or deliberately misrepresenting or omitting material information submitted in the course of an official inquiry or investigation.

d. Falsifying any records or information submitted to the board in compliance with the license renewal requirements imposed under 282—Chapter 17.

e. Falsifying or deliberately misrepresenting or omitting material information regarding the evaluation of students or personnel, including improper administration of any standardized tests, including, but not limited to, changing test answers, providing test answers, copying or teaching identified test items, or using inappropriate accommodations or modifications for such tests.

25.3(4) Standard IV—misuse of public funds and property. Violation of this standard includes:

a. Failing to account properly for funds collected that were entrusted to the practitioner in an educational context.

b. Converting public property or funds to the personal use of the practitioner.

c. Submitting fraudulent requests for reimbursement of expenses or for pay.

d. Combining public or school-related funds with personal funds.

e. Failing to use time or funds granted for the purpose for which they were intended.

25.3(5) Standard V—violations of contractual obligations.

a. Violation of this standard includes:

(1) Signing a written professional employment contract while under contract with another school, school district, or area education agency.

(2) Asking a practitioner to sign a written professional employment contract before the practitioner has been unconditionally released from a current contract. An administrator shall make a good faith effort to determine whether the practitioner has been released from the current contract.

(3) Abandoning a written professional employment contract without prior unconditional release by the employer.

(4) As an employer, executing a written professional employment contract with a practitioner, which requires the performance of duties that the practitioner is not legally qualified to perform.

(5) As a practitioner, executing a written professional employment contract, which requires the performance of duties that the practitioner is not legally qualified to perform.

b. In addressing complaints based upon contractual obligations, the board shall consider factors beyond the practitioner's control. For purposes of enforcement of this standard, a practitioner will not be found to have abandoned an existing contract if:

(1) The practitioner obtained a release from the employing board before discontinuing services under the contract; or

(2) The practitioner provided notice to the employing board no later than the latest of the following dates:

1. The practitioner's last work day of the school year;

2. The date set for return of the contract as specified in statute; or

3. June 30.

25.3(6) Standard VI—unethical practice toward other members of the profession, parents, students, and the community. Violation of this standard includes:

a. Denying the student, without just cause, access to varying points of view.

b. Deliberately suppressing or distorting subject matter for which the educator bears responsibility.

c. Failing to make reasonable effort to protect the health and safety of the student or creating conditions harmful to student learning.

- d.* Conducting professional business in such a way that the practitioner repeatedly exposes students or other practitioners to unnecessary embarrassment or disparagement.
- e.* Engaging in any act of illegal discrimination, or otherwise denying a student or practitioner participation in the benefits of any program on the grounds of race, color, religion, age, sex, sexual orientation, gender identity, disability, marital status, or national origin.
- f.* Soliciting students or parents of students to purchase equipment, supplies, or services from the practitioner for the practitioner's personal advantage.
- g.* Accepting gifts from vendors or potential vendors where there may be the appearance of or an actual conflict of interest.
- h.* Intentionally disclosing confidential information including, but not limited to, unauthorized sharing of information concerning student academic or disciplinary records, health and medical information, assessment or testing results, or family income. Licensees shall comply with state and federal laws and local school board policies relating to the confidentiality of student records, unless disclosure is required or permitted by law.
- i.* Refusing to participate in a professional inquiry when requested by the board.
- j.* Aiding, assisting, or abetting an unlicensed person in the completion of acts for which licensure is required.
- k.* Failing to self-report to the board within 60 days any founded child abuse report, or any conviction for a criminal offense listed in 25.3(1) "b"(1) which requires revocation of the practitioner's license.
- l.* Delegating tasks to unqualified personnel.
- m.* Failing to comply with federal, state, and local laws applicable to the fulfillment of professional obligations.
- n.* Allowing another person to use one's practitioner license for any purpose.
- o.* Performing services beyond the authorized scope of practice for which the individual is licensed or prepared or performing services without holding a valid license.
- p.* Falsifying, forging, or altering a license issued by the board.
- q.* Failure of the practitioner holding a contract under Iowa Code section 279.13 to disclose to the school official responsible for determining assignments a teaching assignment for which the practitioner is not properly licensed.
- r.* Failure of a school official responsible for assigning licensed practitioners holding contracts under Iowa Code section 279.13 to adjust an assignment if the practitioner discloses to the official that the practitioner is not properly licensed for an assignment.

25.3(7) Standard VII—compliance with state law governing obligations to state or local governments, student loan obligations, and child support obligations. Violation of this standard includes:

- a.* Failing to comply with 282—Chapter 8 concerning payment of debts to state or local governments.
- b.* Failing to comply with 282—Chapter 9 concerning repayment of student loans.
- c.* Failing to comply with 282—Chapter 10 concerning child support obligations.

25.3(8) Standard VIII—incompetence. Violation of this standard includes, but is not limited to:

- a.* Willfully or repeatedly departing from or failing to conform to the minimum standards of acceptable and prevailing educational practice in the state of Iowa.
- b.* Willfully or repeatedly failing to practice with reasonable skill and safety.

[ARC 8136B, IAB 9/9/09, effective 10/14/09; ARC 8137B, IAB 9/9/09, effective 10/14/09; ARC 9208B, IAB 11/3/10, effective 12/8/10]

These rules are intended to implement Iowa Code section 272.2(1) "a."

[Filed 7/15/04, Notice 4/28/04—published 8/4/04, effective 9/8/04]

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[Filed ARC 9208B (Notice ARC 8970B, IAB 7/28/10), IAB 11/3/10, effective 12/8/10]

MEMORANDUM

To: Iowa Board of Educational Examiners
From: Julie Bussanmas
Assistant Attorney General

Re: Procedure for appeals of proposed decision to full Board

Date: May 1, 2011

I would like to review the procedure the law requires when a proposed decision is reviewed by the full Board. It has been the Board's practice to have an Administrative Law Judge hear and decide its disciplinary cases. The ALJ's decision is a proposed decision. 282 IAC 11.27(2).

If the full Board agrees with the decision, and neither party appeals, the proposed decision automatically becomes a final decision of the Board after 30 days. 282 IAC 11.27, 11.28. If the Board wants to reconsider any aspect of the proposed decision, the Board must initiate review within 30 days. Additionally, the proposed decision may be appealed to the full Board by either the licensee or the State. 282 IAC 11.28.

If there is an appeal or review initiated, Board rules provide that a scheduling order be issued, which sets up a briefing and argument schedule. 282 IAC 11.28 (5) and (6). Generally, the schedule will set time limits for the appealing party to file the first brief; the other party to file a responsive brief, and then an opportunity for the appealing party to file a reply brief. Either party can request oral argument; the Board may grant oral argument if it deems appropriate. An oral argument is usually limited to ten minutes per side. After the full Board reviews the briefs, along with the evidence before the original hearing panel, the Board decides whether any changes should be made to the proposed decision, and a final decision is issued. The Board has authority to change individual factual findings, conclusions of law, application of the law to the specific facts of that case, and the sanction imposed.

In the event of an appeal or review, the Board is responsible for reviewing the entire record before the ALJ, including the statement of charges, the State's exhibits, the Respondent's exhibits, a transcript of the hearing, and copies of the parties' briefs. This is a significant task, and one that requires considerable time. However, to assure the Board's appeal process is meaningful, it is essential that Board members review this information. It is important that the Board articulate in its decision the specific factual findings or conclusions it is changing and the reasons for such a change. Likewise, the Board needs to fully explain its rationale for the sanction imposed, especially if such a sanction deviates from sanctions imposed in prior contested cases.

**Board of Educational Examiners
MODEL MOTIONS**

I. CLOSED SESSION

To move the Board meeting into closed session, one of the following motions is needed:

A) Disciplinary cases:

- 1) Combined: I move that the Board go into closed session for the purposes of discussing whether to initiate licensee disciplinary proceedings and discussing the decision to be rendered in a contested case, pursuant to Iowa Code sections 21.5(1)(d) and 21.5(1)(f);
- 2) Consider Proposed Decision: I move that the Board go into closed session for the purpose of discussing the decision to be rendered in a contested case, pursuant to Iowa Code section 21.5(1)(f).
- 3) Review Investigation (accept or reject case): I move that the Board go into closed session for the purpose of discussing whether to initiate licensee disciplinary proceedings, pursuant to Iowa Code section 21.5(1)(d).

B) Litigation:

I move that the Board go into closed session for the purpose of discussing strategy with counsel in matters that are presently in litigation or where litigation is imminent, pursuant to Iowa Code section 21.5(1)(c).

II. DISCIPLINARY CASES:

A) Actions which may be taken following review of investigative report:

1) Accept case / find probable cause [Rule 11.6(3)]:

I move that in case number _____, the Board finds probable cause to establish a violation of the following provisions of the Code of Professional Conduct and Ethics, 282 IAC _____ (insert relevant reference(s) from rule chapter 25) order this case set for hearing.

[Note: When multiple allegations are included in one complaint, the Board may find probable cause for one or more, or all of the allegations. A probable cause finding on any of the allegations will support acceptance of the case if the allegation is of a sufficient magnitude to warrant disciplinary action. The motion should specifically identify the allegations for which probable cause is found.]

2) Reject case / no probable cause [Rule 11.6(1)]:

[Note: several different findings may support rejection of a case. Under the directive given by the court in the Lewis Central case, the Order rejecting a case must contain a statement sufficient to explain the board's interpretation of the probable-cause requirement and its application to the facts as determined by the investigation. The following sample motions provide a starting point for discussion. In each case, consideration must be given to the specific facts and circumstances presented, and the motion for rejection of a case tailored to fit the case.]

a) Allegation(s) not proven: I move that in case number _____, the Board finds that the evidence gathered in the investigation, including witness statements and the documentary evidence, does not substantiate the allegations in the complaint, and that the Board therefore lacks probable cause to proceed with this matter.

b) Allegation(s) proven, but not sufficient to warrant a hearing: I move that in case number ____, the Board finds that, although one or more of the allegations in the complaint may be substantiated by the investigation, and the allegations may constitute a technical violation of the board's statute or administrative rules; the evidence before the board indicates that _____ [*insert the relevant reason for rejection, for example:*

- (1) *the alleged violation was an isolated incident,*
- (2) *adequate steps have been taken to remedy the violation and to ensure that incidents of a similar nature do not occur in the future,*
- (3) *or other similar rationale appropriate to the specific case*]. The Board therefore lacks probable cause to proceed with this matter.

c) Allegations primarily involve employment or personnel issues: I move that in case number ____, the Board finds that the allegations primarily involve employment or personnel issues, which are generally better resolved through direct interaction between the licensee and the employer or through personnel or grievance procedures. The investigation in this matter did not establish violations which appear to rise to the level of unethical, discriminatory or harassing conduct necessary to support disciplinary action by the Board. The Board will not pursue formal disciplinary action in this matter.

3) Request further inquiry [Rule 11.6(2)]:

I move that in case number ____, the Board return the complaint and investigative report to the investigator to gather further information, and return the case to the Board for further consideration.

B) Action upon voluntary surrender of license or agreement by parties:

1) Licensee action (may occur with or without the filing of a complaint:

a) Accept licensee voluntary surrender/revocation: I move that in case number ____, the Board accept the Respondent's waiver of hearing and voluntary surrender and that the Board issue an order permanently revoking the Respondent's license with no possibility of reinstatement.

b) Accept licensee agreement to accept lesser sanction:
I move that in case number ____, the Board accept the Respondent's waiver of hearing and agreement to accept a lesser sanction, and issue an order imposing the agreed upon sanction.

c) Reject licensee agreement to accept lesser sanction:

I move that in case number ____, the Board acknowledge the Respondent's waiver of hearing and agreement to accept a lesser sanction, but decline to accept the agreed upon sanction because – in the judgment of the Board – the proposed sanction is not appropriate for the circumstances of the case.

2) "Local Settlement" between Complainant and Licensee:

a) Withdrawal of complaint [rules 11.4(5)]:

I move that in case number ____, the Board acknowledge the local settlement and withdrawal of the complaint submitted by the parties; and dismiss the case without further proceedings.

b) Accept proposed discipline: I move that in case number ____, the Board acknowledge the local settlement submitted by the parties and issue an Order imposing the sanction agreed upon by the Board.

c) Reject proposed discipline:

I move that in case number ____, the Board acknowledge the local settlement submitted by the parties, but decline to accept the agreed upon sanction because – in the judgment of the Board – the proposed sanction is not appropriate for the circumstances of the case.

3) Proposed Settlement submitted for approval (AAG as prosecutor):

a) Accept: I move that in case number _____, the Board accept the stipulation and settlement submitted by the parties, and issue an Order incorporating the agreement of the parties and imposing the agreed upon sanction.

b) Reject: I move that in case number _____, the Board reject the stipulation and settlement submitted by the parties, and return the case to the parties for further proceedings consistent with this decision.

C) **Action to Extend the 180-day deadline for issuance of final decisions [Rule 11.4(8)]:**

1) Extend deadline upon request of parties:

I move to extend the 180-day deadline for issuance of the final decision in case number _____, based upon the request of [the Complainant / the Respondent / or both parties].

2) Extend deadline without request from the parties:

I move to extend the 180-day deadline for issuance of the final decision in case number _____, based upon [*choose one or more: a) the extraordinary amount of time needed to complete the investigation; b) delay in scheduling the hearing; c) delay in the hearing due to a request for continuance by [the Complainant / Respondent / or both parties]; d) delay necessary to allow review of the proposed decision; e) delay necessary to consider the Appeal from the proposed decision; or f) [identify other circumstances causing delay in this case].*]

D) Action upon initial consideration of proposed decision [Rule 11.28]:

- 1) Allow decision to become final unless party initiates appeal:

I move that the Board not initiate review of the proposed decision in case number _____, [*case name*], and allow the proposed decision to become the final decision of the Board unless an appeal is taken by one of the parties within the time allowed by rule.

- 2) Initiate review of decision:

I move that the Board initiate review of the proposed decision in case number _____, [*case name*], to examine *a)* whether the licensee's conduct violated the Board's rules of sufficient magnitude to justify discipline; or *b)* whether the proposed sanction is appropriate in light of the findings].

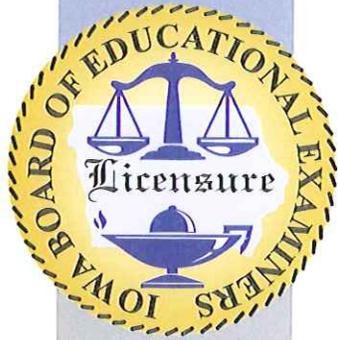
E) Action following Board review or appeal by party:

- 1) Accept proposed decision as filed:

I move that in case number _____, [*insert case name*], the Board accept the proposed decision in all particulars and issue an Order adopting the proposed decision as the final decision of the Board.

- 2) Accept the proposed decision, with revisions:

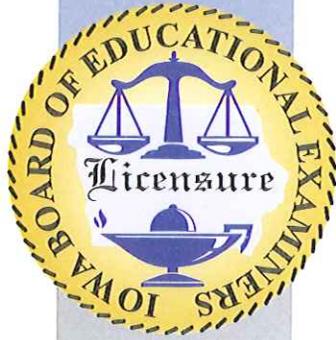
I move that in case number _____, [*insert case name*], the Board accept the proposed decision with the following modifications, [*specifically recite changes - identify any portions of the proposed decision which are to be stricken and indicate additions*].



IOWA BOARD OF EDUCATIONAL EXAMINERS

Operating Guidelines

Adopted: May 04, 2007
Revised: May 1, 2008
Reviewed: June 24, 2011



State of Iowa
BOARD OF EDUCATIONAL EXAMINERS
Grimes State Office Building
Des Moines, Iowa
50319-0146

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It is the policy of the Iowa Board of Educational Examiners not to discriminate on the basis of race, color, national origin, gender, disability, religion, creed, age, sexual orientation or marital status in its programs or employment practices. If you have questions or grievances related to this policy, please contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, 400 E. 14th St., Des Moines, Iowa 50319-0147. Telephone: 515.281.5849

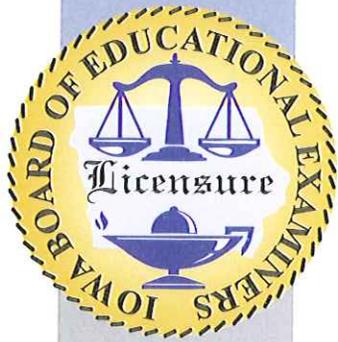


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Preface

This document contains operational guidelines for the internal management of the Iowa Board of Educational Examiners. The purpose of these operating guidelines is to provide the members of the Board with a reference to assist them in performing their statutory duties, responsibilities and to help the public and constituents understand the role of the Board. These guidelines are designed to:

1. Provide newly appointed board members with an overview of the role of the board, helping them understand the scope of their duties and responsibilities.
2. Enable the board to effectively carry out its leadership role as educational advocates and policy-makers, ensuring that policies exist that promote educational quality throughout the state.
3. Provide for an efficient and effective operation of meetings.
4. Outline board officer duties and procedures for electing board officers.
5. Address interaction among board members, internal board relationships and board/agency relationships.
6. Outline the board's decision-making process.
7. Address effective and open communication and handling of public concerns.
8. Address opportunities for board development.
9. Ensure accountability through an orderly process of planning and goal setting.

The Board of Educational Examiners

The Board of Educational Examiners helps ensure educator quality through high licensing standards for Pre-K through grade 12 teachers, administrators and other educators. The 11-member Board serves as:

- An independent licensing agency, created in 1989, helping to safeguard schoolchildren by establishing professional and ethics standards for Iowa's educators.
- A self-financed agency that relies solely on revenues from licensing fees and receives no state appropriations
- A resource to other professional education organizations, answering questions and concerns of teachers, school board members and administrators regarding licensure and ethics.

Who Serves on the Board?

The Governor appoints the Board and is ratified by the Senate. By Code, nine of eleven members must be licensed educators, four of whom are administrators and the majority of the Board must be teachers. Two are public members, of which one must have school board experience.

Mission

The mission of the Iowa Board of Educational Examiners is to establish and enforce rigorous standards for Iowa educational practitioners to effectively address the needs of students.

Beliefs Statements

We Believe:

- that an effective licensure system is efficient, innovative, and responsive to needs of students and educators.
- in collaboration with other organizations to improve professional development and preparation programs.
- that education is a profession.
- that establishing ethical standards protects students and practitioners.

I. Organizational Meeting

A well-defined and understood organizational structure and related procedures are essential to the proper functioning of the board.

General Guidelines for Board Members:

A. Organizational Meeting

The organization of the board shall occur at the regular June meeting. Election of officers shall be included as an agenda item for that meeting.

B. Board Officers

Officers for the board shall be chair and vice-chair. The executive director shall serve as chief executive officer and an agency staff member will serve as recording secretary.

C. Election of Officers

The executive director shall serve as temporary chairperson at the organizational meeting until the chair is elected. Each board member may place one name in nomination for chair. Any Board member may be elected to the position of chair or vice-chair. A ballot for chair will be distributed to the members of the Board and the signed ballot will be collected by the board's secretary, recorded and announced. The same process for the election of vice-chair will be repeated during the meeting.

D. Term of Office

The term of office for each elected position shall be one year, with no limit as to the number of terms any one individual may serve.

E. Chair vacant

If the chair becomes vacant the vice-chair shall automatically fill the vacancy, and a replacement for the vice-chair shall be elected.

F. Duties of the chair shall be as follows:

1. Work with the executive director to develop meeting agendas.
2. Preside at board meetings.
3. Appoint all board committees.
4. Form new committees as the need arises.
5. Properly instruct all assigned committee members as to the duties, responsibilities, scope and term of the assignment.
6. Work closely with the executive director and appropriate staff to ensure proper liaison between the board and the agency.
7. Attend outside meetings and functions as needed.
8. Provide effective leadership and direction.
9. Assign members to serve as representatives of the board to external groups and organizations.
10. Call special meetings as needed.
11. Vote on matters before the board as the other members.

12. Perform duties as prescribed by law or by action of the Board.
13. Work with Board members to schedule meetings that all members can attend reflecting professional and personal conflicts.

G. Duties of the Vice-chair shall be as follows:

1. Perform the duties of the chair during his/her absence.
2. Fill the vacancy of the chair if such occurs during a term of office.
3. Assume other responsibilities as assigned by the chair.

H. Committees of the Board

1. The Board shall have the following standing committees: executive committee, professional practices committee, and operating guidelines committee. The chair shall select committee members to reflect the make up of the board, annually.
 - a. Executive committee (4 members)
 1. Serve as an advisory committee to the executive director.
 2. Identify issues and future agenda items.
 - b. Professional Practices committee (4 members)
 1. Review complaints and results of investigations alleging or implying a violation of a statute or rule under the jurisdiction of the Board.
 2. Determine if probable cause exists or not and make a recommendation to the Board.
 - c. Operating Guidelines Committee (4 members)
 1. Review / revise the Board's operating guidelines every year.

I. Removal of a board member from office:

Board members may be removed from office in accordance with Iowa Code Section 66.1A, 69.15 and 272.3 Membership.

II. Meeting Procedures

Board meetings shall be conducted in an open and orderly fashion. Agendas and supportive information will be openly publicized in advance of the meeting to encourage meaningful dialogue. Timetables will be established and followed to the greatest degree possible in addressing agenda items. The chair shall be provided with appropriate procedures and authority to maintain an orderly process at all times.

General Guidelines for Board Members:

A. Agendas

1. Robert's Rules of Order shall guide the operational meeting procedures.
2. The board chair and the executive director will develop meeting agendas cooperatively.

3. Individual board members may suggest an item for inclusion on the agenda by conferring with the chair and / or the executive director.
4. The agenda should be posted on the website at least one-week prior to Board meeting. The agenda and supporting information will be sent to each board member one week in advance of the meeting.
5. The agenda will be posted in the Grimes State office building 24 hours prior to the scheduled meeting time.
6. The agenda will be organized generally as follows: call to order; licensee discipline; consent items; communication; rules (adoption, notice and discussion items); reports; petitions for waiver and adjournment.
7. Items listed under the consent agenda will be considered to be routine and will be acted on by the board in one motion. A member of the board or the executive director may request specific items to be discussed and/or removed from the consent agenda.

B. Voting

1. All voting members of the board may vote on all matters coming before them for consideration. All members of a committee may vote on all matters coming before the committee for consideration.
2. No member may vote by proxy.
3. Voting by the board and its committees shall be by voice unless a roll call vote is requested by a member, in which case the vote shall be taken as requested. Roll call votes shall be required for professional practice issues.
4. A majority of those present and voting shall be necessary to carry a motion before the board or a committee.
5. On any issue not requiring a roll call vote, the vote of the members of the board shall be recorded either as a unanimous vote or by identifying the members taking each position. A member may abstain from voting and the abstention will be recorded.
6. When a potential conflict of interest exists, the board member concerned may ask for recusal that will then be recorded.
7. A majority vote shall decide the issue and that shall become the official position of the board. An issue that has been voted on by the board may be brought back for a vote when a majority of the members request a review.

C. Public Participation

1. A person who wishes to address the board shall fill out a card provided at the door, and given to the board secretary prior to the meeting.

2. As a general guideline, a limit of five (5) minutes will be allotted for any presentation made under the public comment agenda item. If a large group of individuals request to address a specific issue, the chair may limit the number of speakers. At that time, members of the public may present comments, suggestions or concerns, even if the concerns do not relate to a specific item on the agenda. Remarks by board members should be limited to requests for further information, as any issue not on the agenda might necessitate staff research and may need to be placed on a subsequent agenda before the board takes action.
3. If an issue raised during the public comment section will require the preparation of an agenda item, it will be referred to the executive director of the Board for such preparation and the person raising the issue will be informed of the date of the meeting when it will appear on the agenda.
4. When the stated subject of public comment is on the agenda, the speaker may be heard either at the time stated on the agenda for public comment or at the time the agenda item is discussed by the board, to be determined at the discretion of the chair of the board. When addressing the board, each speaker should begin by stating his/her name and or what organization he / she is representing.

D. Board Member Reports (Communication section of the agenda)

1. It shall be the responsibility of any board member to keep the other members informed on developments related to the Board's work. Board members may prepare written reports, which may be included with board meeting materials.
2. A member on special assignment should be prepared to recommend what he/she thinks the appropriate actions should be, if an action is required.
3. Board reports should be informative; yet concise.

E. Administrative Rules

The Board has jurisdiction to adopt rules in areas of educational licensure. Iowa Administrative Code Chapter 282 is designated as the agency's identification number for the Board's rules. An administrative rule, duly adopted, has the effect of law.

The process for rule adoption is as follows:

1. The board, assisted by the executive director, may propose rules as a result of direction from the General Assembly, or as a result of its own evaluation of need provided the board has statutory authority.
2. Proposed rules will be drafted by agency staff for the board with the assistance of legal counsel.

3. Once drafted, rules will be presented to the board for a first review. The purpose of the first reading is to provide information to the board. At the next regular meeting, the proposed rules will be presented to the Board for filing of a notice of intended action. A public hearing will be scheduled prior to adoption of the rules.
4. Rules adopted by the Board will be filed with the administrative rules coordinator and the Code Editor and become effective thirty-five days thereafter, unless emergency adoption is required or unless a later effective date is provided for in the rule(s).

F. Kinds of Meetings

All meetings of the board shall comply with the open meetings law. The board may conduct the following kinds of sessions:

1. Regular meeting – as approved by the board.
2. Special meeting – a meeting that may be called at any time, with concurrence of a majority of the Board.
3. Work session – any meeting or part of a meeting scheduled to consider special board projects and information items.
4. Annual retreat – a meeting for reflection, goal setting, priority setting, and board development activities in conjunction with a regular meeting.
5. Executive session – any meeting or part of a meeting that is closed to certain persons for deliberation on certain matters as specified in the public meetings law. Generally, no final action shall be taken or any decision made while in executive session.
6. Telephone conference meeting – a meeting conducted by telephone to deal with specific, limited, necessary matters. In compliance with the public meetings law, members of the press or public must be permitted access. The individuals allowed access must pay actual expenses necessitated by public access.
7. Other Electronic Transmission meeting – a regularly scheduled meeting or a special meeting called to deal with specific, limited necessary matters, may be held using the appropriate technology.

G. Executive Director for the Board of Educational Examiners

The executive director is responsible for exercising general supervision over the agency to the extent that it is necessary to ascertain compliance with provisions of the Iowa Code and Administrative Rules.

1. The executive director is hired by the Board as stated in Code of IA Chapter 272.2 (7) Board of examiners created

2. The executive director is the chief administrator of the agency and performs the function of executive officer as defined in the position description questionnaire (PDQ).
3. The executive director's salary and benefits are determined by the Job Classification System of the Department of Administrative Services.
4. The executive director is evaluated by the Board Chair with input from the Board.

III. Board Expectations

Collaboration is imperative in order to develop and sustain a high quality education system that serves the needs of students, families, and citizens across the state. The Board will work together and form alliances that support the Board's work. Each member of the board shares the responsibility for developing a positive, interactive environment.

General Guidelines for Board Members:

A. Leadership

The Board, the executive director of the Board and staff shall provide leadership and direction for future educational development in this state. In so doing they will:

1. Procure adequate resources to support improvement.
2. Communicate high levels of support, commensurate with available resources aimed at increasing and/or improving the educational licensure system.
3. Form strong alliances with all parties interested in the development of a comprehensive educational licensure system.
4. Remain current in their knowledge of or seek appropriate counsel on the provisions of the School Laws and School Rules of Iowa.
5. Participate in meetings in order to be informed and engaged in decision-making. Board members should be in attendance at all meetings and that attendance will be documented in the minutes. Inconsistent attendance will be brought to the individual's attention by the board chair. Attendance policies shall be covered during new board member orientation.
 - a. Alternative forms of attendance will be permitted in exceptional circumstances.

B. Board Relationships

1. Internal board relationships:
 - a. The democratic process shall be used in making board decisions. A majority vote shall decide the issue and that shall become the official position of the board.
 - b. Each board member will remain receptive to divergent views of other members and will look for and recognize the positive contributions, efforts, and skills of each team member.

- c. Board members will demonstrate respect through listening, verbal and nonverbal communications.
 - d. Board members will maintain a sense of hope, optimism, and humor in working together.
2. Board / executive director relationships. Board members will:
 - a. Recognize the unique roles of the executive director and board members.
 - b. Look to the executive director for leadership, guidance and direction.
 - c. Route requests for staff assistance or attendance at board meetings through the executive director.
 - d. Establish positive relationships.
 3. Board/public relationships:
 - a. Be mindful of the board's role as representatives of the public.
 - b. Recognize public concerns.
 - c. Interact with the public in a positive, diplomatic manner.
 - d. Establish positive public relationships to ensure a quality educational system in Iowa.

IV. Decision Making

A well-defined and clearly understood process is needed if orderly and effective decisions are to be made by the board in a timely manner.

General Guidelines for Board Members:

The executive director will use the following procedure to assist the board in the decision-making process:

- A. Clearly define the issue under consideration.
- B. Determine that the issue is appropriate for board consideration.
- C. Present the issue to the board in a timely manner.
- D. Review all pertinent facts concerning the situation.
- E. Collect input from parties affected by the decision.
- F. Organize and analyze collected data.
- G. Present solution(s) to the board with a recommendation and rationale with a cost estimate when appropriate.
- H. Provide a plan for implementation, monitoring and evaluation. This plan may include a timeline for bringing the issue back to the board for further consideration.
- I. Communicate the decision to those affected.

V. Special Assignments for Board Members

As a general practice, the board shall operate as a "committee of the whole." However, there are circumstances, when the chair and / or the executive director will make committee assignments.

General Guidelines for Board Members:

- A. In making such assignments the chair and/or the executive director shall give consideration to the background, interests, experience,

availability and accessibility of the assignee(s). Consideration will also be given to gender balance, balancing by statutory position on the board, and to balancing these assignments among members of the board.

- B. Assignments shall be accompanied by an explanation of the purpose, responsibility charges and granted authority.
- C. Each assignment will carry a clearly specified length of service.
- D. Board members will provide reports at the appropriate time(s).
- E. Assignees should represent the interests of the board to the best of their ability and knowledge but should refrain from officially committing to a formal board position until formal action or the delegation of authority supports such a commitment.

VI. Effective and Open Communication

Effective communication is essential to achieving board goals.

General Guidelines for Board Members:

- A. Information discussed in executive session will remain confidential. Sharing such information with unauthorized persons at any time is unacceptable.
- B. If significant issues will be covered in a meeting, board members may expect that the executive director will make every effort to inform them prior to the issue becoming public.
- C. Board members may expect that the executive director and staff will follow through on information requested by the board when it is requested through the appropriate channels.

VII. Handling Public Concerns

Board members are readily accessible to the public, especially in their own local area and thus public concerns will frequently be expressed to them. It is generally not wise to attempt to resolve the problem until comprehensive information is obtained on the issue. The following guidelines are designed to assist board members handle public concerns in a tactful, orderly and effective way.

General Guidelines for Board Members:

- A. Listen to the individual or group concern and clearly define the concern.
- B. Ask if he or she has discussed the issue with the person immediately responsible.
- C. Advise that the board has established a process for handling concerns and direct them to the appropriate personnel and / or the website.
- D. Report the full details of the concern to the executive director in a timely manner, and ask that he/she keep the board informed of developments.
- E. Correspondence or communications relating to the business of the board, received by members of the board from individuals or

organizations, shall be forwarded to the chair and executive director if it appears that the correspondence was sent to only one board member.

- F. If an individual board member is ever contacted regarding a professional practices case, the board member shall immediately inform the party that such contact is inappropriate and can prejudice the process. The board member shall report the contact to the executive director and / or chair of the Board, and shall use discretion as to whether or not abstention from voting on the issue is necessary or advisable.

VIII. Planning, Goal Setting and Accountability

The Board recognizes the importance of planning in determining the direction of education policymaking at the state level.

General Guidelines for Board Members:

- A. In order to achieve their goals, the Board is committed to thoughtful planning, implementation, collection and consideration of data, evaluation, accountability, and reporting of results.
- B. The board will collaborate with the education constituencies and develop policies that support its long-term plan
- C. The board's agenda is the primary vehicle for doing its work.
- D. The board and the agency will report on progress made toward goals on a regular basis.
- E. Plans, goals and priorities will be reviewed and revised on a regular basis.

IX. Board Development

It is essential to good board service to increase and enhance skills and to understand education issues in making policy decisions.

General Guidelines for Board Members:

- A. Professional development for the Board members permits them to:
 1. Increase their knowledge and understanding of emerging education issues;
 2. Compare various states' approaches to addressing similar issues and solving common problems;
 3. Expand their networking opportunities to exchange ideas and gain new perspectives on issues;
 4. Explore issues in real world settings, outside the context of board meetings; and
 5. Mobilize the board with new strategies for achieving the board's agenda. (Adapted from NASBE Boardmanship Review, "The Importance of Board Member Development," February, 1999).
- B. Board development goals will be set on an annual basis to ensure continued growth and development as board members.
- C. In addition to the Board meeting agenda items that relate specifically to board priorities and are designed to develop an

understanding and knowledge base for policy making, there are several additional ways that board members can obtain development:

1. Board study or work sessions
2. Conference attendance and participation
3. Task force or commission participation
4. Reports and other written materials
5. Technology or internet-based development

D. Orientation of New Members

The executive director of the Board shall orient each new member concerning the board's functions, general policies, administrative rules and procedures as soon as possible.

1. The new member shall be given selected material to assist in orienting him/her to the work of the board.
2. The new member shall be given selected material to familiarize him/her with relevant provisions of state government, including the gift law.
3. The incoming new member shall be invited to meet with the executive director and other personnel to discuss operations of the agency.
4. Orientation will be a structured process occurring over time and new board members will be directed to resources so they can do additional exploration on their own.
5. Current board members may and are encouraged to attend orientation sessions.

E. Each new board member will be assigned a mentor.