

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

Adopted and Filed

Rule making related to electronic filing, confidential information, and public records

The Public Employment Relations Board hereby amends Chapter 1, “General Provisions,” Chapter 2, “General Practice and Hearing Procedures,” Chapter 6, “Negotiations and Negotiability Disputes,” Chapter 7, “Impasse Procedures,” and Chapter 10, “Declaratory Orders”; rescinds Chapter 12, “Public Records and Fair Information Practices,” and adopts a new Chapter 12 with the same title; and amends Chapter 14, “Arbitrators,” and Chapter 16, “Electronic Document Management System,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 20.6(5).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 17A, 20 and 22.

Purpose and Summary

The following amendments are adopted after feedback and internal review. The adopted amendments update filing requirements with the agency due to the use of electronic filing through the agency’s electronic document management system, clarify provisions relating to confidential information due to the use of electronic filing, and eliminate outdated provisions and language.

Items 1 and 3 require electronic filing of petitions for rule making and petitions requesting a waiver.

Item 2 modifies the definition of “protected information” for consistency with Chapter 16.

Items 4 through 9, 14, 16, 17, and 33 amend outdated Iowa Code, Iowa Acts, and Iowa Administrative Code references. Item 10 provides an updated reference to the rule on fees of neutrals.

Items 11 and 12 require persons to email requests for impasse services to the agency rather than personally delivering or mailing the requests. Item 13 requires the agency to email the arbitrator list to the parties, which is consistent with current agency practice. Item 13 also removes an outdated Iowa Acts reference.

Item 15 clarifies that a petition for a declaratory order shall be electronically filed with the agency.

Item 18 rescinds and replaces Chapter 12, related to public records and fair information practices, due to the agency’s use of the electronic document management system for storage of records. The format and language of the chapter was chosen after internal consideration and review of other Iowa Administrative Code chapters regarding public records.

Items 19 through 22 amend outdated Iowa Code and Iowa Acts references and procedures relating to teacher termination adjudication.

Items 23 through 32 address the agency’s electronic document management system. The adopted amendments clarify rules regarding confidential documents or records and protected information. The adopted amendments also address the obligations of filers using the electronic document management system.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on March 27, 2019, as **ARC 4365C**. The agency requested that comments be received by April 17, 2019. A public hearing was held on April 17, 2019, at 10 a.m. in the Jessie Parker Building, 510 East 12th Street, Des Moines, Iowa. The agency received written formal comment seeking clarification on Chapter 12, relating to requests for access to records, in light of the statutory requirements of Iowa Code chapter

22. The agency discussed the comment at the public hearing. As a result of the comment, the language in rule 621—12.3(17A,20,22), which is in Item 18, was clarified to ensure consistency with Iowa Code chapter 22.

Adoption of Rule Making

This rule making was adopted by the Board on May 2, 2019.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

These rules do not provide for a waiver of their terms, but are instead subject to the agency's general waiver provisions found at rule 621—1.9(17A,20).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on June 26, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend rule 621—1.5(20) as follows:

621—1.5(20) Petition for rule making. Any person may file a petition with the board pursuant to 621—Chapter 16 for the adoption, amendment or repeal of a rule. Such petition ~~shall be in writing~~ and shall include:

1.5(1) The name and address of the person requesting the adoption, amendment or repeal of the rule.

1.5(2) A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation to and the relevant language of the particular portion or portions of the rule proposed to be amended or repealed.

1.5(3) A brief summary of petitioner's arguments in support of the action urged in the petition.

1.5(4) A brief summary of any data supporting the action urged in the petition.

1.5(5) The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by or interested in the proposed action which is the subject of the petition. Within 60 days after the filing of a petition, the board shall either deny the petition ~~in writing~~, stating its reasons for the denial, or initiate rule-making proceedings in accordance with Iowa Code chapter 17A.

ITEM 2. Amend subrules 1.6(11), 1.6(13) and 1.6(14) as follows:

1.6(11) "*Protected information*" means personal information, the nature of which warrants protection from unlimited public access, including:

- a. Social security numbers.
- b. Financial account numbers.
- c. Dates of birth.

- d. Names of minor children.
- e. Individual taxpayer identification numbers.
- f. Personal identification numbers.
- g. Other unique identifying numbers.
- h. Confidential information.

1.6(13) “*Public safety unit*” means a bargaining unit with at least 30 percent of employees in the unit who are public safety employees or as required by ~~2017 Iowa Acts, House File 291, section 18,~~ Iowa Code section 20.32 for certain transit employees.

1.6(14) “*Supplemental pay*” means a payment of moneys or other thing of value that is in addition to compensation received pursuant to any other permitted subject of negotiation specified in Iowa Code section 20.9 as ~~amended by 2017 Iowa Acts, House File 291, section 6,~~ and is related to the employment relationship.

ITEM 3. Amend subrules 1.9(5) and 1.9(17) as follows:

1.9(5) *Filing of petition.* All petitions requesting a waiver must be filed ~~personally or by mail with the board at its offices at 510 East 12th Street, Suite 1B, Des Moines, Iowa 50319~~ with the agency pursuant to 621—Chapter 16. If the petition relates to a pending contested case proceeding or a proceeding pending before the agency which could culminate in a contested case proceeding, the petition shall be filed in the case docketed in the agency’s electronic document management system (EDMS) and bear the caption of that proceeding. ~~The board shall acknowledge the filing of a petition by providing the petitioner with a file stamped copy.~~

1.9(17) *Service of ruling.* Within seven days of its issuance, the board’s ruling on the petition shall be served by the board by ordinary mail upon ~~the petitioner,~~ any entity or individual to whom the ruling pertains and any other individuals or entities entitled to notice pursuant to any other provision of law if the individuals or entity representatives have not filed appearances in the case to receive service by EDMS.

ITEM 4. Amend **621—Chapter 1**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 17A.9A and ~~chapters~~ chapter 20 and 279.

ITEM 5. Amend subrule 2.3(2) as follows:

2.3(2) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case hearing become final agency action unless, within 20 days after the mailing of the decision to the parties, a motion to vacate pursuant to subrule 2.3(3) is filed and served on all parties or, if the decision is a proposed decision within the meaning of Iowa Code section 17A.15(2), an appeal from the decision to the board on the merits is filed within the time provided by rule ~~621—9.2(20)~~ 621—9.2(17A,20) or, in cases brought pursuant to Iowa Code section ~~19A.14~~ 8A.415, a petition for review by the board on the merits is filed within the time provided by rule ~~621—11.8(19A,20)~~ 621—11.8(8A,20).

ITEM 6. Amend paragraph **2.15(1)“g”** as follows:

g. Upon an employee organization, by serving the person designated by the employee organization to receive service pursuant to ~~621—subrule 8.2(2)~~ 8.4(2) or by service upon the president or secretary of the employee organization.

ITEM 7. Amend subrule 2.20(1) as follows:

2.20(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, a presiding officer in a contested case, or in proceedings on a petition for declaratory order in which there are two or more parties, shall not communicate directly or indirectly with any party, representative of any party or any other person with a direct or indirect interest in such case, nor shall any such party, representative or person communicate directly or indirectly with the presiding officer concerning any issues of fact or law in that case, except upon notice and opportunity for all parties to participate. Nothing in this provision precludes the presiding officer, without such notice and opportunity for all parties to participate, from communicating with members of the agency or seeking the advice or help of persons other than those with a personal interest in, or those engaged

in personally investigating, 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. 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’s investigative work product in the course of determining whether 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 a presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 ~~as amended by 1998 Iowa Acts, chapter 1202.~~

ITEM 8. Amend subrule 6.4(1) as follows:

6.4(1) Applicability. This rule applies only to bargaining units which include at least one public safety employee, as defined in 621—subrule 1.6(12) or as required by ~~2017 Iowa Acts, House File 291, section 18,~~ Iowa Code section 20.32 concerning certain transit employees.

ITEM 9. Amend rule 621—7.1(20) as follows:

621—7.1(20) General. Except as provided in ~~the second paragraph of subrule 7.5(6), 7.5(6) “b,”~~ the rules set forth in this chapter are applicable only in the absence of an impasse agreement between the parties or the failure of either to utilize its procedures. Nothing in these rules shall be deemed to prohibit the parties, by mutual agreement, from proceeding directly to binding arbitration at any time after impasse.

ITEM 10. Adopt the following new rule 621—7.2(20):

621—7.2(20) Fees of neutrals. See rule 621—14.4(20).

ITEM 11. Amend subrule 7.3(1) as follows:

7.3(1) Request for mediation. Either party to an impasse may email to the agency a request ~~the board in writing~~ to appoint a mediator to the impasse.

An original and one A copy of the request for mediation shall be ~~filed with the board~~ emailed to the agency and shall, in addition to the request for mediation, contain:

a. The name, address, and telephone number of the requesting party, and the name, address, telephone number, and email address of its bargaining representative or of the chairperson of its bargaining team.

b. The name, address, and telephone number of the opposing party to the impasse, and the name, address, telephone number, and email address of its bargaining representative or of the chairperson of its bargaining team.

c. A description of the collective bargaining unit involved and the approximate number of employees in the unit.

d. A statement indicating whether the public employer of the unit involved is subject to the budget certification requirements of Iowa Code section 24.17 and, if the public employer is not subject to those requirements, a statement of the date upon which the public employer’s next fiscal or budget year commences.

e. A statement indicating whether the bargaining unit is a public safety or non-public safety unit as specified by Iowa Code section 20.3 ~~as amended by 2017 Iowa Acts, House File 291, section 1,~~ and rule 621—6.4(20).

f. A concise and specific listing of the negotiated items upon which the parties have reached impasse.

ITEM 12. Amend subrule 7.5(2) as follows:

7.5(2) Form and contents of request. The request for arbitration shall be ~~in writing~~ emailed to the agency and shall include the name, address, email address, and signature of the requesting party and the capacity in which the requesting party is acting.

ITEM 13. Amend subrule 7.5(5) as follows:

7.5(5) Selection of arbitrator. Upon the filing of a timely request for arbitration, the board shall ~~serve~~ email a list of five arbitrators ~~upon~~ to the parties. Within five days of ~~service of the list from when that~~ email is sent, the parties shall select their arbitrator from the list in the manner specified in Iowa Code section 20.22(4) ~~as amended by 2010 Iowa Acts, House File 2485, section 26.~~

ITEM 14. Amend paragraph **7.5(6)“c”** as follows:

c. The arbitration hearing shall be limited to those factors listed in Iowa Code section 20.22 ~~as amended by 2017 Iowa Acts, House File 291, sections 12 and 13,~~ and subrules 7.5(7) and 7.5(8), and such other relevant factors as may enable the arbitrator to select the most reasonable offer, in the arbitrator’s judgment, of the final offers submitted by the parties on each impasse item. Arbitrators appointed pursuant to impasse procedures agreed upon by the parties shall likewise consider these same factors.

During the hearing, the parties shall not introduce, and the arbitrator shall not accept or consider, any direct or indirect evidence regarding any subject excluded from negotiations pursuant to Iowa Code section 20.9 ~~as amended by 2017 Iowa Acts, House File 291, section 6,~~ except as required for purposes of the consideration of the factors specified in subrule 7.5(7) and paragraph 7.5(8) “a.”

ITEM 15. Amend rule 621—10.1(17A,20) as follows:

621—10.1(17A,20) Who may petition. Any person, public employer or employee organization may file a petition with the board pursuant to 621—Chapter 16 for a declaratory order as to the applicability to specified circumstances of a statute, rule or order within the primary jurisdiction of the agency.

ITEM 16. Amend rule 621—10.8(17A,20) as follows:

621—10.8(17A,20) Action on petition. Within the time allowed by ~~1998 Iowa Acts, chapter 1202, section 13(5)~~ Iowa Code section 17A.9(5), after receipt of a petition for a declaratory order, the board or its designee shall take action on the petition as required by that section.

ITEM 17. Amend subrule 10.9(1), introductory paragraph, as follows:

10.9(1) The board shall not issue a declaratory order where prohibited by ~~1998 Iowa Acts, chapter 1202, section 13(1),~~ Iowa Code section 17A.9(1)“b”(2) and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

ITEM 18. Rescind 621—Chapter 12 and adopt the following **new** chapter in lieu thereof:

CHAPTER 12
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

621—12.1(17A,20,22) Definitions. As used in this chapter:

“Agency” means the public employment relations board or PERB.

“Confidential record” means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the agency is prohibited by law from making available for examination by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

“Custodian” means the board or a person lawfully delegated authority to act for the agency in implementing Iowa Code chapter 22.

“Open record” means a record other than a confidential record.

“Personally identifiable information” means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

“Record” means the whole or a part of a public record as defined in Iowa Code section 22.1.

“Record system” means any group of records under the control of the agency from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

“Routine use” means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected or is maintained. “Routine use” includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

621—12.2(17A,20,22) Statement of policy. This chapter implements Iowa Code section 22.11 by establishing agency policies and procedures for the maintenance of records. The purpose of this chapter is to facilitate public access to open records. It also seeks to facilitate sound agency determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. This agency is committed to the policies set forth in Iowa Code chapter 22; agency staff shall cooperate with members of the public in implementing the provisions of that chapter.

621—12.3(17A,20,22) Requests for access to records.

12.3(1) Location of record. A request for access to a record should be directed to the Chair, Public Employment Relations Board, 510 East 12th Street, Suite 1B, Des Moines, Iowa 50319.

12.3(2) Office hours. Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

12.3(3) Request for access. Requests for access to open records may be made in writing or in person. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail, email or telephone requests shall include the name, address, email address and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

12.3(4) Response to requests. Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the agency shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 621—12.4(17A,20,22) and other applicable provisions of law.

12.3(5) Security of record. No person may, without permission from the custodian, search or remove any record from agency files. Examination and copying of agency records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

12.3(6) Copying. A reasonable number of copies of an open record may be made in the agency’s office.

12.3(7) Fees.

a. When charged. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

b. Copying and postage costs. Copies of records may be made by or for members of the public on agency photocopy machines or from electronic storage systems at cost as determined by the custodian, based upon the actual costs of the copying. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

c. Supervisory fee. An hourly fee may be charged for actual agency expenses in supervising the examination and copying of requested records. The hourly fee shall not be in excess of the hourly wage of an agency clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

d. Search fees. If the request requires research or if the record or records cannot reasonably be readily retrieved by the office, the requester will be advised of this fact. Reasonable search fees may be charged where appropriate. In addition, all allowable costs for retrieval and copying of information stored in electronic storage systems may be charged to the requester.

e. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

621—12.4(17A,20,22) Procedures for access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 621—12.3(17A,20,22).

12.4(1) Proof of identity. A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

12.4(2) Requests. The custodian may require that a request to examine and copy a confidential record be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

12.4(3) Notice to subject of record and opportunity to obtain injunction. After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address, email address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

12.4(4) Request denied. When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

a. The name and title or position of the custodian responsible for the denial; and

b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to this requester.

12.4(5) Request granted. When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

621—12.5(17A,20,22) Requests for treatment of a record as a confidential record and its withholding from examination. The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order, to refuse to disclose that record to members of the public.

12.5(1) *Persons who may request.* Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order, authorizes the custodian to treat the record as a confidential record, may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

12.5(2) *Request.* A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be electronically filed with the custodian. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, email address and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as such a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

A person submitting such a request shall, if possible, accompany the request with a copy of the record in question from which those portions for which such confidential record treatment has been requested have been deleted. If the original record is being submitted to the agency by the person requesting such confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

12.5(3) *Failure to request.* Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the agency does not request that it be withheld from public inspection under Iowa Code section 22.7(3) or 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

12.5(4) *Timing of decision.* A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is submitted, or when the custodian receives a request for access to the record by a member of the public.

12.5(5) *Request granted or deferred.* If a request for such confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

12.5(6) *Request denied and opportunity to seek injunction.* If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record need not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify the requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

621—12.6(17A,20,22) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request

for such a disclosure must be in writing and must identify the particular record or records that may be disclosed, and the particular person or class of persons to whom the record may be disclosed (and, where applicable, the time period during which the record may be disclosed). The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed, may be required to provide proof of identity. (Additional requirements may be necessary for special classes of records.) Appearance of counsel on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the agency to disclose records about that person to the person's attorney.

621—12.7(17A,20,22) Disclosures without the consent of the subject.

12.7(1) Open records are routinely disclosed without the consent of the subject.

12.7(2) To the extent allowed by law, disclosure of confidential records or exempt records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

- a. For a routine use as defined in rule 621—12.1(17A,20,22) or in any notice for a particular record system.
- b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record; provided that the record is transferred in a form that does not identify the subject.
- c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of the government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.
- d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last known address of the subject.
- e. To the legislative services agency under Iowa Code section 2A.3.
- f. Disclosures in the course of employee disciplinary proceedings.
- g. In response to a court order or subpoena.

621—12.8(17A,20,22) Routine use. To the extent allowed by law, the following uses are considered routine uses of agency records:

12.8(1) Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

12.8(2) Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

12.8(3) Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

12.8(4) Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

12.8(5) Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

12.8(6) Any disclosure specifically authorized by the statute under which the record was collected or maintained.

621—12.9(17A,20,22) Consensual disclosure of confidential records.

12.9(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 621—12.6(17A,20,22).

12.9(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency

may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

621—12.10(17A,20,22) Release to subject.

12.10(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 621—12.9(17A,20,22). However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or records otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by Iowa Code section 22.7(5).

d. As otherwise authorized by law.

12.10(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

621—12.11(17A,20,22) Availability of records.

12.11(1) General. Agency records are open for public inspection and copying unless otherwise provided by rule or law.

12.11(2) Confidential records. The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Records which are exempt from disclosure pursuant to Iowa Code section 22.7.

b. Minutes of closed meetings of a government body pursuant to Iowa Code section 21.5(5).

c. Mediators' documents, including proposals, notes, memoranda, or other paperwork product, relating to mediation of agency cases and collective bargaining negotiations pursuant to Iowa Code section 20.31.

d. A show of interest contained in representation and decertification case files, in which public employees indicate by original signature whether they wish to be represented by or decertify a certified employee organization for representation or decertification election pursuant to Iowa Code section 22.7(69).

e. Those portions of agency staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by the agency when disclosure of these statements would:

(1) Enable law violators to avoid detection.

(2) Facilitate disregard of requirements imposed by law.

(3) Give a clearly improper advantage to persons who are in an adverse position to the agency. (See Iowa Code sections 17A.2 and 17A.3.)

f. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential pursuant to Iowa Code sections 22.7(4), 622.10, and 622.11; Iowa R. Civ. P. 1.503; Fed. R. Civ. P. 26(b); and case law. Attorney-client communications are confidential pursuant to Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

g. Sealed bids received prior to the time set for public opening of bids pursuant to Iowa Code section 72.3.

h. Individual financial records pursuant to Iowa Code sections 422.20 and 422.72.

i. Identifying details in final orders, decisions, and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy pursuant to Iowa Code section 17A.3(1) "e."

j. Criminal investigative reports or investigative data pursuant to Iowa Code section 22.7(5).

k. Criminal history and intelligence data pursuant to Iowa Code sections 22.7(9), 692.3, and 692.18.

l. Minutes of testimony pursuant to Iowa Rules of Criminal Procedure 2.4(6)(a) and 2.5(3).

- m.* Information which is confidential under the law governing the agency providing information to this agency.
- n.* Biographical or identifying information about a child victim pursuant to Iowa Code chapter 915.
- o.* Victim registration pursuant to Iowa Code chapter 915.
- p.* Any other records made confidential by law.

12.11(3) Authority to release confidential records. The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect these records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 621—12.4(17A,20,22). If the agency initially determines that it will release such records, the agency may where appropriate notify interested persons and withhold the records from inspection as provided in subrule 12.4(3).

621—12.12(17A,20,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 621—12.1(17A,20,22). Unless otherwise stated, the authority for this agency to maintain the record is provided by Iowa Code chapter 20, the statutes governing the subject matter of the record, and the enabling statutes of the agency, where applicable. The record systems maintained by the agency are:

12.12(1) Prohibited practice complaint case files. These files contain information which pertains to the alleged violation of Iowa Code chapter 20. A person, employee organization or public employer may file the documents contained in this type of case. Case files may include pleadings, briefs, notices, rulings, decisions, orders, exhibits, transcripts, docket sheets, general correspondence, attorneys' notes, settlement offers, memoranda, and research materials. Cases contain personal information of the representatives and may contain personal information if the complainant or respondent is an individual. Further personal information may be included in testimony, exhibits, and other documents. Cases filed prior to January 1, 2015, are contained on the agency's network. Cases filed after January 1, 2015, are contained within the agency's electronic document management system. If the case went to hearing, the hearing may have been recorded by mechanical means, and a copy of the recording may be available. The files are maintained by the agency and are indexed by the case number. The files may contain materials which are confidential as attorney work product or contain settlement offers and mediators' documents. Some materials are confidential under other applicable provisions of law. Copies of documents or hearing recordings filed in these cases may be obtained through the agency or the agency's electronic document management system.

12.12(2) Bargaining unit determination and representative certification case files. These files contain information which pertains to the establishment of appropriate bargaining units, conduct of secret ballot elections and monitoring of the merger, and affiliation and disaffiliation of certified employee organizations. A person, employee organization or public employer may file the documents contained in these types of cases. Case files may include pleadings, briefs, tally of ballots, notices, rulings, decisions, orders, exhibits, transcripts, docket sheets, general correspondence, attorneys' notes, settlement offers, memoranda, research materials, and investigation materials. Cases contain personal information of the representatives and may contain personal information if the petitioner or respondent is an individual. Further personal information may be included in transcript testimony, exhibits, and other documents. Cases filed prior to January 1, 2015, are contained on the agency's network. Cases filed after January 1, 2015, are contained within the agency's electronic document management system. If the case went to hearing, the hearing may have been recorded by mechanical means, and a copy of the recording may be available. The files are maintained by the agency and are indexed by the case number. Further personal information may be included in testimony and exhibits. The files may contain materials which are confidential as attorney work product, shows of interest, settlement offers and mediators' notes. Some materials are confidential under other applicable provisions of law. Copies of documents or hearing recordings filed in these cases may be obtained through the agency or the agency's electronic document management system.

12.12(3) Retention and recertification election case files. These files contain information which pertains to the conduct of a retention and recertification election. A person, employee organization or public employer may file the documents contained in this type of case. Case files include pleadings, notices, voter lists, tally of ballots, orders, challenges, and objections. Cases contain personal information of the representatives. Further personal information may be included in testimony, exhibits, and other documents. The public employer is required to send to the agency a listing of employees eligible to vote in the recertification elections, and the representatives are emailed eligible employees' personal information. Cases are contained within the agency's electronic document management system and the agency's network. The files located on the agency's network may contain materials which are confidential as attorney work product, shows of interest, settlement offers and mediators' notes. Some materials are confidential under other applicable provisions of law. Copies of documents filed in these cases may be obtained through the agency or the agency's electronic document management system.

12.12(4) Negotiability dispute case files. These files contain information which pertains to specific contract proposals and whether a specific contract proposal is a mandatory, permissive or excluded subject of bargaining under Iowa Code section 20.9. An employee organization or public employer may file the documents contained in this type of case. Such files contain documents concerning the agency's determination of the negotiability question. The records may include pleadings, briefs, notices, rulings, orders, exhibits, transcripts, docket sheets, general correspondence, attorneys' notes, memoranda, research materials, and information compiled under the direction of the agency. Cases contain personal information of the representatives. Cases filed prior to January 1, 2015, are contained on the agency's network. The files may contain materials which are confidential as attorney work product and contain settlement offers and mediators' documents. Some materials are confidential under other applicable provisions of law. Cases filed after January 1, 2015, are contained within the agency's electronic document management system. If the case went to hearing, the hearing may have been recorded by mechanical means, and a copy of the recording may be available. The files are maintained by the agency and are indexed by the case number. Copies of documents or hearing recordings filed in these cases may be obtained through the agency or the agency's electronic document management system.

12.12(5) Declaratory order case files. These files contain information which pertains to applicability of a statute, rule or order within the primary jurisdiction of the agency. A person, employee organization or public employer may file the documents contained in this type of case. Such files contain documents concerning the agency's determination of that question. The records may include pleadings, notices, rulings, orders, exhibits, transcripts, docket sheets, general correspondence, attorneys' notes, memoranda, research materials, and information compiled under the direction of the agency. Cases contain personal information of the representatives and may contain personal information of the petitioner or respondent if the petitioner or respondent is an individual. Further personal information may be included in testimony, exhibits, and other documents. Cases filed prior to January 1, 2015, are contained on the agency's network. Cases filed after January 1, 2015, are contained within the agency's electronic document management system. If the case went to hearing, the hearing may have been recorded by mechanical means, and a copy of the recording may be available. The files may contain materials which are confidential as attorney work product, settlement offers and mediators' notes. Some materials are confidential under other applicable provisions of law. The files are maintained by the agency and are indexed by the case number. Copies of documents or hearing recordings filed in these cases may be obtained through the agency or the agency's electronic document management system.

12.12(6) Contract negotiation impasse files. These files contain information which pertains to the public employer and certified employee organization's negotiations. An employee organization or public employer may file the documents contained in the file. The records may include the request for impasse services, assignment of a mediator, interest arbitration list, selection letters, and correspondence regarding mediation and interest arbitration hearings. Mediators may maintain assigned impasse files which contain confidential documents related to the mediation. Files contain personal information of the representatives. The case files are paper, and each impasse is recorded in an agency database. The files are maintained by the agency and are indexed by the bargaining unit number. Copies of the documents contained in the files may be obtained through the agency.

12.12(7) Neutral files. The agency maintains biographical data on qualified mediators and arbitrators. A mediator's file contains an application, an acceptance letter, and the yearly mediator contract. An arbitrator's file contains an application, an acceptance letter, renewal applications, biographical sketches, letters of recommendation, a résumé, and decisions. Neutral files may also contain concerns expressed by employees or employer and employee organization representatives, material related to agency-conducted investigations, and information on hearings and decisions issued by the agency. Cases contain personal information of the representatives and may contain personal information of the petitioner or respondent if the petitioner or respondent is an individual. Further personal information may be included in testimony, exhibits, and other documents. Neutral files contain personal information of the neutral and may contain personal information of employees and employer and employee organization representatives if they provide written comments regarding a neutral. The neutral files are paper. The files may contain materials which are confidential as attorney work product, settlement offers and mediators' notes. Some materials are confidential under other applicable provisions of law. The files are maintained by the agency and are commonly indexed by the neutral's last name. Biographical sketches of neutrals are located on the agency's website. Copies of documents contained in these files may be obtained through the agency.

12.12(8) Employee organization files. Employee organizations are required to file certain documents with the agency prior to certification and annually. An employee organization's representative files the documents contained in the file. The records include the certified employee organization's constitution and bylaws, amended constitution and bylaws, registration reports, annual reports, correspondence, bargaining unit description and subsequent amendments. The employee organization files contain personal information of the representatives. Further personal information may be included in testimony and exhibits. The employee organization files are both on paper and contained within the agency's electronic document management system. The files are maintained by the agency and are indexed by the certified employee organization in paper files and by certified employee organization number if the files are on the agency's electronic document management system. Copies of the documents contained in these files may be obtained through the agency or the agency's electronic document management system.

12.12(9) State employee appeals of grievance decisions and disciplinary action case files. These files contain appeals from a response from the Iowa department of administrative services regarding an employee's grievance or appeal of a disciplinary action. A person or representative may file the documents contained in this type of case. These files contain information which pertains to the appeal. The records may include the appeal form and attachments, pleadings, briefs, notices, rulings, decisions, orders, exhibits, transcripts, docket sheets, general correspondence, attorneys' notes, settlement offers, memoranda, and research materials. Cases contain personal information of the representative and the employee. Further personal information may be included in testimony, exhibits, and other documents. Cases filed prior to January 1, 2015, are contained on the agency's network. Cases filed after January 1, 2015, are contained within the agency's electronic document management system. If the case went to hearing, the hearing may have been recorded by mechanical means, and a copy of the recording may be available. The files are maintained by the agency and are indexed by the case number. The files may contain materials which are confidential as attorney work product and contain settlement offers and mediators' documents. Some materials are confidential under other applicable provisions of law. Copies of documents or hearing recordings filed in these cases may be obtained through the agency or the agency's electronic document management system.

12.12(10) Public safety unit determination case files. These files contain information which pertains to whether a bargaining unit is a public safety unit. An employee organization or public employer may file the documents contained in this type of case. Such files contain documents concerning the agency's determination of that question. The records may include pleadings, notices, orders, exhibits, transcripts, docket sheets, general correspondence, attorneys' notes, memoranda, research materials, and information compiled under the direction of the agency. Cases contain personal information of the representatives and may contain personal information of employees. Further personal information may be included in testimony, exhibits, and other documents. Cases are contained within the agency's

electronic document management system. If the case went to hearing, the hearing may have been recorded by mechanical means, and a copy of the recording may be available. The files are maintained by the agency and are indexed by the case number. The files may contain materials which are confidential as attorney work product, settlement offers and mediators' notes. Some materials are confidential under other applicable provisions of law. Copies of documents or hearing recordings filed in these cases may be obtained through the agency or the agency's electronic document management system.

12.12(11) Other Iowa Code chapter 20 case files. These files contain information which pertains to objections which an employer or employee organization may make when impasse procedures are not completed prior to the applicable deadline for completion of impasse procedures, challenges which an employee organization or employer may make when the voter eligibility is challenged, and challenges which an employee organization may make postelection in retention and recertification elections. An employee organization or public employer may file the documents contained in this type of case. Further personal information may be included in testimony, exhibits, and other documents. Such files contain documents concerning the agency's determination of the question. The records may include pleadings, notices, orders, exhibits, transcripts, docket sheets, general correspondence, attorneys' notes, memoranda, research materials, and information compiled under the direction of the agency. Cases contain personal information of the representatives and may contain personal information of employees. Cases are contained within the agency's electronic document management system. If the case went to hearing, the hearing may have been recorded by mechanical means, and a copy of the recording may be available. The files are maintained by the agency and are indexed by the case number. The files may contain materials which are confidential as attorney work product, settlement offers and mediators' notes. Some materials are confidential under other applicable provisions of law. Copies of documents or hearing recordings filed in these cases may be obtained through the agency or the agency's electronic document management system.

12.12(12) Grievance, fact-finding and interest arbitration decisions. The agency maintains decisions issued by neutrals. Grievance arbitration decisions prior to the year 2000 are maintained on the agency's database, and copies of a decision may be obtained through the agency. Grievance arbitration decisions after the year 2000 which the parties agreed could be made public can be obtained through the agency's searchable database system. All fact-finding and interest arbitration decisions can be obtained through the agency's searchable database system.

12.12(13) Collective bargaining agreements. The agency maintains collective bargaining agreements negotiated between the public employer and the certified employee organization. Collective bargaining agreements negotiated prior to the year 2000 are maintained on the agency's database, and copies of these collective bargaining agreements may be obtained through the agency. Collective bargaining agreements negotiated after the year 2000 can be obtained through the agency's searchable database system.

12.12(14) Personnel files. The agency maintains files containing information about agency employees and applicants for positions with the agency. The files contain payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information may be confidential under Iowa Code sections 22.7(11) and 22.7(18). Personnel files are paper files.

12.12(15) Litigation files. These files or records contain information regarding litigation or anticipated litigation which involves the agency. The records include pleadings, briefs, docket sheets, documents, general correspondence, attorneys' notes, memoranda, research materials, and investigation materials. Litigation files are paper files. The files are indexed by the name of the opposing party or case number. The files contain materials which are confidential as attorney work product. Some materials are confidential under other applicable provisions of law. Persons who wish to obtain copies of pleadings and other documents filed in litigation should obtain these from the clerk of the appropriate court which maintains the official copy.

621—12.13(17A,20,22) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 621—12.1(17A,20,22). The records listed may contain information about individuals. Unless otherwise designated, the authority for this agency to maintain the record is provided by Iowa Code chapter 20, the statutes governing the subject matter of the record, and the enabling statutes of the agency, where applicable. All records are stored both on paper and in automated data processing systems unless otherwise noted.

12.13(1) Citizen inquiry and response files. Individuals and representatives write or email this agency on a variety of legal issues with regard to Iowa Code chapter 20. The agency does not generally provide legal advice to individuals but may provide general information.

12.13(2) Internal agency records. These records include agendas, minutes and materials presented during meetings.

12.13(3) Administrative records. These records include documents concerning budgets, property inventory, purchasing, yearly reports, office policies for employees, time sheets, and printing and supply requisitions.

12.13(4) Rule-making records. Official documents executed during the promulgation of agency rules and public comments are available for public inspection.

621—12.14(17A,20,22) Data processing systems. None of the data processing systems used by the agency compare personally identifiable information in one record system with personally identifiable information in another record system.

621—12.15(17A,20,22) Applicability. This chapter does not:

1. Require the agency to index or retrieve records which contain information about individuals by an individual's name or other personal identifier.

2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

3. Govern the maintenance or disclosure of, notification of, or access to records in the possession of the agency which are governed by the regulations of another agency.

4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs.

5. Make available records compiled in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, the Code of Professional Responsibility, and applicable regulations.

These rules are intended to implement Iowa Code chapters 17A, 20, and 22.

ITEM 19. Amend rule 621—14.2(20) as follows:

621—14.2(20) Definitions.

“Advocate” means a person who represents employers, employee organizations, or individuals or entities in labor relations or employment relations matters, including but not limited to the subjects of union representation and recognition matters, negotiations, mediation, arbitration, unfair or prohibited labor practices, equal employment opportunity, and other areas generally recognized as constituting labor or employment relations. *“Advocate”* includes representatives of employers or employees in individual cases or controversies involving workers' compensation, occupational health or safety, minimum wage, or other labor standards matters. *“Advocate”* also includes persons directly or indirectly associated with an advocate in a business or professional relationship as, for example, partners or employees of a law firm.

“Arbitrator” means a person serving as a neutral decision-maker in interest arbitrations, or grievance arbitrations, ~~or teacher termination adjudications.~~

“*Grievance arbitration*” means the proceedings on an alleged contract violation as provided in a collective bargaining agreement entered into pursuant to Iowa Code chapter 20.

“*Grievance arbitrator*” means a person serving as a neutral decision-maker in a grievance arbitration.

“*Interest arbitration*” means the binding arbitration contemplated by Iowa Code section 20.22 or by an impasse agreement entered into pursuant to Iowa Code section 20.19.

“*Interest arbitrator*” means a person serving as a neutral decision-maker in an interest arbitration.

“*Qualified-arbitrator roster*” or “*roster*” means the agency-maintained list of arbitrators who have met the criteria set forth in this chapter.

~~“*Teacher termination adjudication*” means the proceedings contemplated by Iowa Code section 279.17.~~

~~“*Teacher termination adjudicator*” means a person serving as a neutral decision-maker in a teacher termination adjudication.~~

ITEM 20. Amend subrules 14.5(1), 14.5(3) and 14.5(4) as follows:

14.5(1) *Categories of arbitrators.* The roster shall consist of ~~three~~ two categories of arbitrators:

- a. Interest arbitrators; ~~and~~
- b. Grievance arbitrators; ~~and~~
- c. ~~Teacher termination adjudicators.~~

Persons may be listed on the roster in each category in which they meet the criteria.

14.5(3) *Knowledge and abilities.* Applicants must establish requisite knowledge and abilities as follows:

- a. For listing on the roster as an interest arbitrator:
 - (1) Good verbal and written communication skills;
 - (2) The ability and willingness to travel throughout Iowa and to work prolonged and unusual hours;
 - (3) Knowledge of Iowa Code chapter 20, the agency’s rules, and principles and practices of contracts, public finance, and labor relations; and

- (4) The ability to conduct evidentiary hearings in a fair and impartial manner, develop an accurate record, and prepare and issue clear, reasoned and timely awards. For purposes of this subparagraph, “timely” means within 15 days after the interest arbitration hearing pursuant to Iowa Code section ~~20.22(9)~~ 20.22(10) “a” or in a time frame established by an impasse agreement entered into pursuant to Iowa Code section 20.19.

- b. For listing on the roster as a grievance arbitrator:
 - (1) Good verbal and written communication skills;
 - (2) The ability and willingness to travel throughout Iowa and to work prolonged and unusual hours;
 - (3) Knowledge of arbitral principles and practices, contracts, and labor relations; and
 - (4) The ability to conduct evidentiary hearings in a fair and impartial manner, develop an accurate record, and prepare and issue clear, reasoned and timely awards. For purposes of this subparagraph, “timely” means within the time frame established by the parties’ collective bargaining agreement entered into pursuant to Iowa Code chapter 20.

- ~~c. For listing on the roster as a teacher termination adjudicator:
 - (1) Good verbal and written communication skills;
 - (2) The ability and willingness to travel throughout Iowa and to work prolonged and unusual hours;
 - (3) Knowledge of Iowa Code section 279.17; and
 - (4) The ability to review adjudicatory records developed by another body, hear legal arguments in a fair and impartial manner, and prepare and issue clear, reasoned and timely decisions. For purposes of this subparagraph, “timely” means within 15 days after the teacher termination adjudication hearing pursuant to Iowa Code section 279.17(7).~~

14.5(4) *Experience.*

~~a.~~ Applicants must demonstrate requisite experience in labor relations or arbitration in the category in which the applicant seeks listing on the roster in one of the following ways:

- ~~(1)~~ a. For listing on the roster as an interest arbitrator:

- ~~1. (1)~~ Issuance of at least four fact-finding or interest arbitration decisions or a combination thereof;
 - ~~2. (2)~~ At least three years' experience as a mediator in collective bargaining interest disputes, with training and experience in conducting hearings and issuing reasoned awards; or
 - ~~3. (3)~~ At least five years' experience in labor relations or labor law, with training and experience in conducting hearings and issuing reasoned awards.
 - ~~(2) b.~~ For listing on the roster as a grievance arbitrator:
 - ~~1. (1)~~ Issuance of at least four grievance awards; or
 - ~~2. (2)~~ At least five years' experience in labor relations or labor law, with training and experience in conducting hearings and issuing reasoned awards.
 - ~~(3) For listing on the roster as a teacher termination adjudicator:~~
 - ~~1. Issuance of at least four decisions rendered in an appellate capacity; or~~
 - ~~2. At least five years' experience in the field of education, with training and experience in reviewing adjudicatory records and issuing reasoned decisions.~~
- ~~b.—The board may give credit against the years of experience requirement to a candidate who has received a master's or equivalent degree in a related area or who has adjudicatory experience in a field or fields other than labor relations.~~

ITEM 21. Amend paragraph **14.6(4)“b”** as follows:

~~b.~~ Successful completion of the program will result in the participant's inclusion on the roster as an interest arbitrator. Participants must satisfy the criteria for grievance arbitrators ~~and teacher termination adjudicators~~ outlined in subrules 14.5(3) and 14.5(4) prior to inclusion on the roster under ~~those categories~~ that category.

ITEM 22. Amend **621—Chapter 14**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 20.1, 20.6, and 20.22 ~~and 279.17~~.

ITEM 23. Amend rule 621—16.1(20) as follows:

621—16.1(20) Effective date and scope. This chapter governs the filing of ~~all~~ documents in ~~adjudicatory all~~ proceedings before the agency ~~that are filed on or after September 24, 2014, or those proceedings converted to electronic proceedings upon the board's order.~~ This chapter also governs the filing of all documents ~~in adjudicatory proceedings converted to electronic proceedings upon the board's order~~ required to be filed by employee organizations pursuant to 621—Chapter 8. To the extent the rules in this chapter are inconsistent with any other administrative rule of the board, the rules in this chapter shall govern.

ITEM 24. Amend rule 621—16.2(20) as follows:

621—16.2(20) Definitions.

“Agency record” means for all cases the electronic files maintained in EDMS, filings the agency maintains in paper form when permitted by these rules, and exhibits and other materials filed with or delivered to and maintained by the agency.

“Confidential” means agency files, documents, or information excluded from public access by federal or state law or administrative rule, court rule, court order, or case law.

“EDMS” means the electronic document management system, the agency's electronic filing and case management system.

“Electronic filing” means the electronic transmission of a document to the electronic document management system together with the production and transmission of a notice of electronic filing.

“Electronic record” means a record, file, or document created, generated, sent, communicated, received, or stored by electronic means.

“Electronic service” means the electronic transmission of a link where the registered users who are entitled to receive notice of the filing may view and download filed documents.

“Nonelectronic filing” means a process by which a paper document or other nonelectronic item is filed with the agency.

“Notice of electronic filing” means a document generated by the electronic document management system when a document is electronically filed.

“PDF” means an electronic document filed in a portable document format which is readable by the free Adobe® Acrobat® Reader.

“Protected information” means personal information, the nature of which warrants protection from unlimited public access, including:

1. Social security numbers.
2. Financial account numbers.
3. Dates of birth.
4. Names of minor children.
5. Individual taxpayer identification numbers.
6. Personal identification numbers.
7. Other unique identifying numbers.
8. Confidential information.

“Public” refers to agency files, documents, or information that is not confidential or protected.

“Public access terminal” means a computer located at the agency’s office where the public may view, print, and electronically file documents.

“Registered user” means an individual who has registered for an e-filing account through the agency’s EDMS. A registered user can electronically file documents and electronically view and download files through the use of a username and password. In cases in which the registered user has entered an appearance or filed an answer, the registered user will electronically serve and receive notice of electronic filing in cases in which the registered user has appeared.

“Remote access” means a registered user’s ability to electronically search, view, copy, or download electronic documents in an electronic record without the need to physically visit the agency’s office.

“Signature” means a the following:

1. For a registered user electronically filing a document in EDMS, “signature” means the registered user’s username and password accompanied by one of the following:

1. “Digitized signature” means an embeddable image of a person’s handwritten signature;
2. “Electronic signature” means an electronic symbol (“/s/” or “/registered user’s name/”) executed or adopted by a person with the intent to sign; or

3. “Nonelectronic signature” means a handwritten signature applied to an original document that is then scanned and electronically filed.

- “Digitized signature” means an embeddable image of a person’s handwritten signature;
- “Electronic signature” means an electronic symbol (“/s/” or “/registered user’s name/”) executed or adopted by a person with the intent to sign; or

● “Nonelectronic signature” means a handwritten signature applied to an original document that is then scanned and electronically filed.

2. For a party signing a document that another registered user will electronically file, “signature” means the signatory’s name affixed to the document as a digitized or nonelectronic signature.

ITEM 25. Amend paragraph **16.3(1)“a”** as follows:

a. Registration required. Every individual filing documents or viewing or downloading filed documents filed in an adjudicatory proceeding must register as a registered user of the electronic document management system.

ITEM 26. Adopt the following **new** paragraph **16.3(1)“h”**:

h. Agency-initiated registration. The agency may complete the registration process on behalf of an individual in certain instances and email the username and password to the user. When the agency completes the registration process, the user is required to promptly log in and change the password. Following initial notification regarding account registration, the user is required to promptly update and maintain accurate contact information for the EDMS account.

ITEM 27. Amend subrule 16.4(1) as follows:

16.4(1) *Electronic filing mandatory.* Unless otherwise required or authorized by these rules, ~~all documents in adjudicatory all proceedings commenced on or after January 1, 2015, and documents required to be filed pursuant to 621—Chapter 8~~ must be filed using the agency's electronic document management system.

ITEM 28. Adopt the following **new** subrule 16.6(3):

16.6(3) *Returned filing.* A rejected filing is not filed. In such instances, the date and time of filing will be when the filer submits a corrected document and it is approved.

ITEM 29. Amend rule 621—16.8(20) as follows:

621—16.8(20) ~~Format and redaction~~ **Redaction of electronic documents.** ~~All documents must be converted to a PDF format before they are filed in the electronic document management system.~~

16.8(1) *Responsibilities of filers generally.*

a. Prior to filing any document, the registered user shall ensure that the document is certified as confidential or the confidential information is omitted or redacted in accordance with 621—subrule 2.13(2), and that protected information is omitted or redacted in accordance with 621—subrule 2.13(3). This responsibility exists even when the filer did not create the document.

b. The agency will not review filings to determine whether appropriate omissions or redactions have been made. The agency will not, on the agency's own initiative, redact or restrict access to documents containing protected information.

16.8(2) *Omission and redaction requirements.*

a. Protected information that is not material to the proceedings. A filer may redact protected information from documents filed with the agency when the information is not material to the proceedings.

b. Protected information that is material to the proceedings. When protected information is material to the proceedings, a filer must certify the document as confidential when submitting the filing to the agency.

16.8(3) *Information that may be redacted.* A filer may redact the following information from documents available to the public unless the information is material to the proceedings:

a. Driver's license numbers.

b. Information concerning medical treatment or diagnosis.

c. Personal financial information.

d. Sensitive security information.

e. Home addresses.

16.8(4) *Improperly included protected information.* A party may ask the agency to restrict access to improperly included protected information from a filed document. The agency may order a properly redacted document to be filed.

ITEM 30. Rescind rule 621—16.9(20) and adopt the following **new** rule in lieu thereof:

621—16.9(20) *General requirements when filing documents.*

16.9(1) *Format.* All documents must be converted to a PDF before they are filed in EDMS. Documents submitted must be properly scanned, which includes having the pages in the correct order and facing right-side up and having the scanned content of the document be legible.

16.9(2) *Separating documents.* Each document must be separated and uploaded with the correct document type selection on the document upload page. Any attachments to a document shall be uploaded as such and linked to the correct document prior to submission.

16.9(3) *Selecting document types.* For each electronically filed document, a filer must choose an accurate document type from the options listed on the document upload page. Once a document is submitted into EDMS, only the agency may make corrections to the document type the filer has chosen.

16.9(4) *Correcting errors.* If a filer discovers an error in the electronic filing or docketing of a document, the filer must contact the agency as soon as possible. When contacting the agency, the filer

must have available the case number of the document that was filed or docketed erroneously. If the agency discovers an error in the filing or docketing of a document, the agency will ordinarily notify the filer of the error and advise the filer of what further action the filer must take, if any, to address the error.

ITEM 31. Amend rule 621—16.12(20) as follows:

621—16.12(20) Transcripts, briefs and exhibits.

16.12(1) *Transcripts.* If a hearing or oral argument is transcribed, the transcript shall be made available to registered users electronically after final agency action.

16.12(2) *Briefs.* Briefs and memoranda shall be electronically filed. Page numbers should be located at the bottom center of each page and numbered consecutively using Arabic whole numbers. The cover page should be numbered one.

16.12(3) *Exhibits.* Prior to offering an exhibit, the submitting party must redact the exhibit pursuant to rule 621—16.8(20). A party's exhibits admitted into evidence at a hearing shall be electronically filed by the party not later than the date ordered by the presiding officer or board. All exhibits shall be marked with an identifying number or letter, whichever is applicable. For each exhibit, the pages must be numbered consecutively with the first page numbered one.

ITEM 32. Adopt the following new rule 621—16.13(20):

621—16.13(20) Public access with exceptions for closed hearings.

16.13(1) *General rule.* All filings with the agency are public unless system-restricted or filed with restricted access. Electronic filing does not affect public access to agency files.

16.13(2) *Closed hearings.* For proceedings in which a party has elected the right to a closed hearing, all initial pleadings must be filed without restriction. All briefs, exhibits, and transcripts must be filed as “confidential.” The decision constituting final agency action will be filed with unrestricted access.

ITEM 33. Amend **621—Chapter 16**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 20.24 ~~as amended by 2014 Iowa Acts, House File 2172.~~

[Filed 5/2/19, effective 6/26/19]

[Published 5/22/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/22/19.