Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 282—Chapter 5
"Public Records and Fair Information Practices"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 22.11 and 256.146
State or federal law(s) implemented by the rulemaking: Iowa Code sections 22.11 and 256.146

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

September 11, 2024 9 a.m.	Board Room, Suite A 701 East Court Avenue Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Board of Educational Examiners no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Beth Myers, Attorney
Board of Educational Examiners
701 East Court Avenue, Suite A
Des Moines, Iowa 50309
Phone: 515.242.6506
Email: beth.myers@iowa.gov

Purpose and Summary

This proposed chapter provides procedures for public records. The Board is proposing to remove duplicative statutory language.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

The Board bears the cost of compliance, and individuals who seek information from the Department of Education would be assessed a proposed fee.

- Classes of persons that will benefit from the proposed rulemaking:

Iowans in general will benefit from the proposed rulemaking.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The Board discerns no quantitative impact.

- Qualitative description of impact:

The Board discerns no qualitative impact.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

There are no known costs.

- Anticipated effect on state revenues:

There is no effect on state revenues.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The proposed chapter is streamlined and reduces duplicative language.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

There are no known costs or effects on state revenue.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Board considered removing the chapter.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The public benefits from having information about the process for public records.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

There is no effect on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 282—Chapter 5 and adopt the following **new** chapter in lieu thereof:

CHAPTER 5
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The board of educational examiners hereby adopts, with the following exceptions and amendments, the Uniform Rules of Agency Procedure relating to public records and fair information practices, which are published at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf on the general assembly's website.

282—5.9(22,256) Exceptions and additions.

5.9(1) *Definition of "agency."* In lieu of the words "(official or body issuing these rules)", insert "board of educational examiners".

5.9(2) *Request for access to record.* In lieu of the words "(insert agency head)", insert "office where the record is kept". In lieu of the words "(insert agency name and address)", insert "Board of Educational Examiners, 701 East Court Avenue, Suite A, Des Moines, Iowa 50309".

5.9(3) *Office hours.* In lieu of the words "(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code

section 22.4)", insert "any time from 8 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays".

5.9(4) *Fees.* Fees will be determined as provided in 281—Chapter 5.

5.9(5) *Procedure by which additions, dissents, or objections may be entered into certain records.* In lieu of the words "(designate office)", insert "the office of the executive director of the board".

282—5.10(22,256) Disclosures without the consent of the subject.

5.10(1) Records that are not confidential are routinely disclosed without the consent of the subject.

5.10(2) Records that are confidential will be disclosed outside of the board only with the consent of the subject of the record or in circumstances in which consent of the subject is not legally necessary.

282—5.11(22,256) Availability of records. Board records are open for public inspection and copying unless otherwise provided by rule or law. The board may have discretion to disclose some confidential records that are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute that authorizes limited or discretionary disclosure as provided in rule 282—5.4(17A,22). If the board initially determines that it will release these records, the board may, where appropriate, notify interested parties and withhold the records from inspection as provided in this chapter.

282—5.12(22,256) Personally identifiable information. This rule describes the nature and extent of personally identifiable information that is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 282—5.1(17A,22). For each record system, this rule describes the legal authority for the collection of that information, and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with that in another record system. The record systems maintained by the agency include:

5.12(1) *Cases dismissed.* These records contain data supplied by persons or parties filing complaints and responses with the board and contain personally identifiable information such as student name(s), teacher name, administrator name, addresses, disciplinary records, and investigatory reports. This information is collected pursuant to Iowa Code chapter 256 and this chapter and is stored electronically; most of the data are on an automated data processing system.

5.12(2) *Cases decided.* These records contain data supplied by persons or parties filing complaints and responses with the board and contain personally identifiable information such as student name(s), teacher name, administrator name, addresses, disciplinary records, and investigatory reports. This information is collected pursuant to Iowa Code chapter 256 and this chapter and is stored electronically; most of the data are on an automated data processing system.

5.12(3) *Litigation files.* These files or records contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorney's notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney, and case management records. The files contain materials that are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons wishing copies of pleadings and other documents filed in litigation should obtain these from the clerk of the appropriate court that maintains the official copy.

282—5.13(22,256) Other groups of records. This rule describes groups of records maintained by the board other than record systems as defined in rule 282—5.1(17A,22). These records are routinely available to the public. However, the board's files of these records may contain confidential

information, which will be addressed as provided in this chapter. The records listed may contain information about individuals.

5.13(1) *Rulemaking.* Rulemaking records may contain information about individuals making written or oral comments on proposed rules or proposing rules or rule amendments. This information is collected pursuant to Iowa Code sections 17A.3, 17A.4, and 17A.7. These records are stored electronically and not in an automated data processing system.

5.13(2) *Board records.* Records contain agendas, minutes, and materials presented to the board. Records concerning closed sessions are exempt from disclosure under Iowa Code section 21.5(5). Board records contain information about people who participate in meetings. This information is collected under the authority of Iowa Code section 21.3. Board records are not stored in an automated data processing system.

5.13(3) *Publications.* Publications include brochures, annual reports, video tapes, and other informational materials that describe various agency programs. Agency publications may contain information about individuals, including agency staff or members of the board. This information is not stored in an automated data processing system.

5.13(4) *Statistical reports.* Periodic reports of agency decisions are available from the board. Statistical reports are not stored in an automated data processing system.

5.13(5) *Address lists/directories.* The names and mailing addresses of members of boards in other states, professional organizations, public press, and members of the general public evidencing interest in particular events of the agency are maintained in order to provide mailing labels for mass distribution of literature. This information is collected under the provisions of Iowa Code chapter 256.

5.13(6) *Case decisions and declaratory rulings.* All final orders, decisions and rulings are available for public inspection in accordance with Iowa Code section 17A.3. These records may contain personally identifiable information regarding individuals who are the subjects of the appeals or rulings. This information is collected pursuant to Iowa Code chapters 17A and 256 and 282—Chapter 5 and is not stored in an automated data processing system.

5.13(7) *Board budget records.* These records contain data used by the board to develop annual budgets. These records are stored electronically and not in an automated data processing system.

282—5.14(256) Consensual disclosure of confidential records.

5.14(1) *Consent to disclosure by a subject.* To the extent permitted by law, the subject may consent in writing to the board the disclosure of the subject's confidential records.

5.14(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official that seeks the official's intervention on behalf of the subject in a matter that involves the board 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.

282—5.15(22,256) Applicability. This chapter does not:

5.15(1) Compel the board to create a record that does not otherwise exist.

5.15(2) Require the board to index or retrieve records that contain information about individuals by that person's name or other personal identifier.

5.15(3) Make available to the general public records that would otherwise not be available under Iowa Code chapter 22.

5.15(4) Govern the maintenance, disclosure or notification of or access to records in the possession of the board that are governed by the rules of another agency.

5.15(5) Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.

5.15(6) Make available records compiled by the board in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any individual or party subject to such litigation or proceedings is governed by applicable legal

and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the board.

These rules are intended to implement Iowa Code section 22.11.