

EDUCATION DEPARTMENT[281]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 281—Chapter 5
“Public Records and Fair Information Practices”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 22.10
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 22

Public Hearing

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

January 2, 2024
10:30 to 11 a.m.

Room B50
Grimes State Office Building
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 Department of Education no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

Purpose and Summary

This proposed rulemaking rescinds and replaces Chapter 5 regarding fair information practices. This proposed rulemaking updates statutory references, removes unnecessary language, and removes references to obsolete programs.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

The Department bears the cost of compliance, and individuals who seek information from the Department are assessed a proposed fee.

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

Individuals who seek information from the Department will benefit from a clearer process and chapter of rules.

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:

There is no discernible quantitative impact.

- Qualitative description of impact:

There is no discernible qualitative impact.

3. Costs to the State:

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

The enforcement of this chapter is based on the number of requests received and defrayed by the fee specified in the chapter.

- Anticipated effect on state revenues:

There is no discernible impact on state revenues.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction: Inaction is not an option because of the large amount of obsolete matter in the current chapter.

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

There is no less costly method. The statute requires rules, and the Department seeks to make these rules as user-friendly as possible within statutory constraints.

6. Alternative methods considered by the agency:

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

No alternative methods were considered.

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

The statute requires rules.

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 discernible effect on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 281—Chapter 5 and adopt the following **new** chapter in lieu thereof:

CHAPTER 5 PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The department of education hereby adopts, with the following exceptions and amendments, 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. Rule 281—5.1(22,256) sets forth the exceptions and additions to rules, numbered X.1(17A,22) through X.8(17A,22), in the uniform rules chapter in roughly the order in which they appear. Rules 281—5.2(22,256) through 281—5.6(22,256) are additional rules specific to the department.

281—5.1(22,256) Exceptions and additions.

5.1(1) Definition of "Agency." In lieu of the words "(official or body issuing these rules)" in uniform rule X.1, insert "department of education".

5.1(2) Request for access to record. In subrule X.3(1), replace the paragraph with "Requests for access to records of the Iowa department of education are to be directed to the Grimes State Office Building, Des Moines, Iowa 50319-0146, regardless of where those records are located."

5.1(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)" in subrule X.3(2), insert "8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays, and legal holidays".

5.1(4) Fees. In paragraph X.3(7) "c," in lieu of the words "(specify time period)", insert "one hour". The fee will be \$60 per hour.

5.1(5) *Procedure by which additions, dissents, or objections may be entered into certain records.* In rule X.6, in lieu of the words “(designate office)”, insert “the office of the director of the agency”.

5.1(6) *Consent to disclosure by the subject of a confidential record.* In rule X.7, add the following paragraphs:

X.7(1) A letter from a subject of a confidential record to a public official who 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.

X.7(2) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 281—5.6(22,256). However, the agency need not release records to the subject in the following circumstances:

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 are otherwise privileged.

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

d. As otherwise authorized by law.

X.7(3) 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.

281—5.2(22,256) Disclosures without the consent of the subject.

5.2(1) Records that are not confidential are routinely disclosed without the consent of the subject.

5.2(2) Records that are confidential will be disclosed outside of the department only with the consent of the subject of the record or in circumstances in which consent of the subject is not legally necessary.

281—5.3(22,256) Availability of records. Agency records are open for public inspection and copying unless otherwise provided by rule or law. The agency 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 X.4(17A,22). If the agency initially determines that it will release these records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in this chapter.

281—5.4(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 X.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:

5.4(1) *Staff records of the basic educational data survey.* Records of employees of area educational agencies, merged area schools, and approved public and private schools, whose positions require an Iowa teacher’s certificate and contain such personally identifiable information as name, Iowa teacher’s certificate number, and social security number. Other data collected are date of birth, teaching experience, sex, current position and assignments. This information is collected pursuant to Iowa Code section 256.9(18). Data processing systems match, collate, and compare the personally identifiable information of the staff records with that of teacher certification records.

5.4(2) *Driver education records.* Driver education records contain personally identifiable information such as name, driver’s license number, and Iowa teacher’s certificate number collected pursuant to Iowa Code section 321.178. Data processing systems match, collate, and compare the personally identifiable information of the driver education records with that of the teacher certification records and BEDS staff records.

5.4(3) *Bus driver permit records.* Bus driver permit records contain personally identifiable information such as name, social security number, driver’s license number, and bus driver’s permit number collected pursuant to Iowa Code sections 321.376 and 285.11(10) and 281—Chapter 43. Data processing systems match, collate, and compare the personally identifiable information of the bus driver permit numbers with that of bus accident records.

5.4(4) *Teacher certification records.* Teacher certification records contain information about each individual issued an Iowa teacher’s certificate. These records contain such personally identifiable information as name, teacher’s certificate

number and social security number. Other data collected are date of birth, type and source of degree, completion of mandatory postgraduation coursework, experience, and the subjects and grade level authorized to teach. This information is collected pursuant to Iowa Code section 256.7(3) and 256.7(5). Data processing systems match, collate, and compare the personally identifiable information of the teacher certification records with that of BEDS staff records, driver education records, and career education records.

5.4(5) *Exceptional child survey.* These records are exempt from disclosure under Iowa Code section 22.7(1). The information gathered by this system relates to children and youth eligible for special education. Each student record contains a code derived from the child's name and birth date. The coded identifier is the personally identifiable information. Information in each record pertains to the child's condition and the special education instructional and support-related services provided to the child. Each record may also contain the child's teacher's name and teaching certificate number. This information is collected pursuant to Iowa Code chapter 256B and 34 CFR Parts 300 and 303. Procedures for protection of and access to this information are set forth in this state's plan under 20 U.S.C. §1401 et seq. These policies and procedures comply with the Family Educational Rights and Privacy Act of 1974 (34 CFR Part 90) and 34 CFR Part 300.

This information is stored in an automated data processing system that does not match, collate, or compare the personally identifiable information of the exceptional child survey records with the personally identifiable information of other records systems.

5.4(6) *Department approval—special education placements.* These are requests for approval to place a pupil eligible for special education in an out-of-state educational program and would contain personally identifiable information such as the pupil's name, birth date, residence, condition and other information relative to the identified special education needs of the pupil. Response to these requests for department approval would contain similar information.

This information is collected pursuant to Iowa Code section 273.3(5). Data processing systems do not match, collate, or compare the personally identifiable information with other records. All personally identifiable information gathered through this effort is confidential under the provisions of 34 CFR Parts 90 and 300.

5.4(7) *Special education complaint management system.* Information gathered in this record system is utilized as documentation of concerns or complaints related to special education programs and services to children with disabilities under the provisions of 34 CFR Part 300. Personally identifiable information includes the student's name, parent's name, and the nature of the concern or complaint being registered. Data processing systems do not match, collate, or compare personally identifiable information from these records with personally identifiable information of other records systems. Personally identifiable information gathered by this system is confidential under the provisions of 34 CFR Parts 90 and 300.

5.4(8) *Deaf-blind student registry.* This data collection system gathers information related to deaf-blind children and youth in Iowa. Personally identifiable information items would include the child's name, birth date, location, and services being provided to the child. Information is utilized to plan programs and services for all deaf-blind children and their families in the state. Data processing systems do not compare, collate or match personally identifiable information in this system with personally identifiable information in other data systems. Personally identifiable information gathered and maintained by this system is confidential under the provisions of 34 CFR Parts 90 and 300.

5.4(9) *Career education records.* Career education records contain personally identifiable information such as the names and certificate numbers of staff members employed to conduct career education programs. Other data collected concern approvals, reimbursements, enrollments, expenditures, and student characteristics, and completion status relating to career education programs. This information is collected pursuant to Iowa Code chapter 258. Data processing systems match, collate, and compare the personally identifiable information of career education records with that of teacher certification records.

5.4(10) *Drinking driver course records.* These records contain such personally identifiable information as name, address, birth date and social security number. Other data collected are the driver's pre- and post-test scores. This information is collected pursuant to Iowa Code chapter 321J. Data processing systems in this agency do not match, collate, or compare the personally identifiable information of drinking driver records with other record systems.

5.4(11) *Personnel records.* The agency has records concerning individual agency employees, some of which may contain confidential information under Iowa Code section 22.7(11) and other legal provisions. Personnel records may be subject to the rules of the department of administrative services.

5.4(12) *Special project applications.* Applications from public school districts may contain personally identifiable information about qualifications of project staff members. No personally identifiable student data are collected. This information is collected pursuant to Iowa Code sections 442.31 to 442.35.

5.4(13) Grants/awards/projects. Records of persons or agencies applying for grants, awards, or funds for projects may contain information about individuals collected pursuant to specific federal or state statutes or regulations. This information may be stored in an automated data processing system.

5.4(14) Appeal records. These records contain data supplied by persons or entities appealing to the agency and may contain personally identifiable information such as student name, age, scholastic and disciplinary record, and status as regular or special education pupil. This information is collected pursuant to Iowa Code chapters 256B, 260, 275, 280, 282, and 285. The personally identifiable information is not matched, collated, or compared with data in other record systems.

5.4(15) 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, attorneys 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.

281—5.5(22,256) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 281—5.1(22,256). These records are routinely available to the public. However, the agency'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.

5.5(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 on paper and not in an automated data processing system.

5.5(2) State 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(4). State board records contain information about people who participate in meetings. This information is collected under the authority of Iowa Code section 21.3. State board records are not stored in an automated data processing system.

5.5(3) Publications. Publications include news releases, annual reports, project reports, agency newsletters, etc., which describe various agency programs. Agency news releases, project reports, and newsletters may contain information about individuals, including agency staff or members of agency councils or committees. This information is not stored in an automated data processing system.

5.5(4) Statistical reports. Periodic reports of various agency programs are available from the department of education. Statistical reports are not stored in an automated data processing system.

5.5(5) Address lists/directories. The names and mailing addresses of members of councils, working groups, program participants and members of the general public evidencing interest in particular programs/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.

5.5(6) Appeal 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, 256B, 280, 282, 282A, 285, and 290 and 281—Chapters 6, 7 and 41 and is also available on the department's web page.

5.5(7) Published materials. The agency uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law.

5.5(8) Basic educational data survey system records. Curriculum, address, policy and procedures, and enrollment records of the basic educational data survey system contain data concerning the curriculum, building, policy and procedures, and enrollment of merged area schools, area education agencies, and approved public and private K-12 educational agencies.

Address records contain the addresses of buildings in which educational agencies are located and the names of the chief administrators of those agencies collected pursuant to Iowa Code sections 256.7 and 256.9.

5.5(9) Secretary's annual report. This record contains information related to public school districts' attendance figures, revenues and expenditures.

5.5(10) Certified enrollment records. Public school district records with enrollments of resident students in district schools; resident students enrolled in another district; nonresident and out-of-state students enrolled in district schools; and

full-time equivalent (FTE) enrollment of shared time, part-time and area school students of high school age. These records do not contain student names or other personally identifiable information.

5.5(11) School lunch program records. Records of public and private schools participating in the national school lunch program. Records contain information relating to funds available for reimbursements, advance payments, claims, and reimbursements made to schools; dates that participating schools were inspected; and individual employees of school food services of agencies participating in child nutrition programs. The personally identifiable information is collected pursuant to 7 CFR Section 210.9.

5.5(12) Commodity distribution records. Records of the allocation and delivery of federally provided commodities to participating schools.

5.5(13) Transportation records. Transportation records contain operational data for school buses.

5.5(14) Facilities' records. Records of buildings and additions to buildings owned by public and private K-12 educational agencies.

5.5(15) Child care food program records. Records contain information concerning advance payments made to institutions participating in the federal child care food program, agreements between institutions and their sites with program administrators, claims and reimbursements for meals served, and inspections of programs. The name of each program administrator is included in agreement records collected pursuant to 7 CFR Section 226.6(e)(1).

5.5(16) Career information system. Records of a project that stores and utilizes occupational and educational data for student use in career decision making.

5.5(17) Merged area school records. These records contain data concerning equipment (inventory), enrollment (by sex and residence), and the number of pupils completing programs.

5.5(18) High school equivalency diploma records. General equivalency diploma (GED) records contain the names, addresses, social security numbers, and test scores of individuals granted an Iowa high school equivalency diploma. This information is collected pursuant to Iowa Code chapter 259A.

5.5(19) Area education agency budget records. These records contain data used by the state board of education to approve AEA annual budgets.

5.5(20) Area education agency annual financial report records. These records contain data relating to revenue, expenditures, and balances as well as the number of AEA employees in each program.

5.5(21) Juvenile home records. The juvenile home educational program budget and claim documents collect financial, employee, and student operation data. Budget records are used by the agency for program approval. Claim records are used for approving reimbursements and program results.

5.5(22) Nonpublic school pupil textbook services records. These records contain data on public school per pupil textbook expenditures, number of resident nonpublic school pupils requesting textbook services and the cost of providing textbook services for nonpublic school pupils.

5.5(23) Nonpublic school pupils transportation services claims. These records contain data on expenditures for providing transportation to pupils attending approved nonpublic schools and requests for reimbursement.

281—5.6(22,256) Applicability. This chapter does not:

1. Compel the agency to create a record that does not otherwise exist.
2. Require the agency to index or retrieve records that contain information about individuals by that person's name or other personal identifier.
3. Make available to the general public records that would otherwise not be available under the public records law, Iowa Code chapter 22.
4. Govern the maintenance or disclosure of, notification of or access to records in the possession of the agency that are governed by the rules of another agency. This chapter applies to all records of the department of education. This chapter does not apply to the records of the following agencies under the department that have their own rulemaking authority: college student aid commission, educational examiners board, and school budget review committee.
5. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.
6. Make available records compiled by the agency 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 is governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the agency.

These rules are intended to implement Iowa Code section 22.11.