

EDUCATION DEPARTMENT[281]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 281—Chapter 102
“Procedures for Charging and Investigating Incidents
of Abuse of Students by School Employees”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 280.17
State or federal law(s) implemented by the rulemaking: Iowa Code section 280.17

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 to 10:30 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:

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Purpose and Summary

This proposed chapter is intended to prevent and respond to abuse of students by school employees.

The Department proposes rescinding an obsolete rule and removing restrictive terms that do not add value. The Department added language to emphasize the proper role of Level-Two investigators and that an investigation may continue even if an employee resigns.

The Department is particularly interested in how this chapter could be made more understandable or usable.

Analysis of Impact

- Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Schools and area education agencies (AEAs) bear the responsibility of complying with this proposed rulemaking.
 - Classes of persons that will benefit from the proposed rulemaking:
Students will benefit from this proposed chapter by being protected from abuse by school employees.
- 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 known quantitative impact attributable to the proposed rulemaking.
 - Qualitative description of impact:
The proposed rulemaking is more readable due to the elimination of unnecessary or obsolete language.
- Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
The Department bears the enforcement costs of this rulemaking.

- Anticipated effect on state revenues:
There is no anticipated effect on state revenues.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:
The current chapter's readability could be improved. Inaction would retain unnecessary rule text.

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

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:
None.
- 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 effect on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 281—Chapter 102 and adopt the following **new** chapter in lieu thereof:

CHAPTER 102
PROCEDURES FOR CHARGING AND INVESTIGATING INCIDENTS OF ABUSE
OF STUDENTS BY SCHOOL EMPLOYEES

281—102.1(280) Definitions.

"Abuse" may fall into either of the following categories:

1. "Physical abuse" means nonaccidental physical injury to the student as a result of the actions of a school employee.
2. "Sexual abuse" means any sexual offense as defined by Iowa Code chapter 709 or Iowa Code section 728.12(1). The term also encompasses acts of the school employee that encourage the student to engage in prostitution as defined by Iowa law, as well as inappropriate, intentional sexual behavior, or sexual harassment by the school employee toward a student.

"Board of educational examiners" means the board created in Iowa Code chapter 256, subchapter VII, part 3.

"Designated investigator" means the person or persons appointed by the board of directors of a public school district, or the authorities in control of a nonpublic school, at level one, to investigate allegations or reports of abuse of students by school employees and also refers to the appointed alternate.

"Incident" means an occurrence of behavior that meets the definition of physical or sexual abuse in these rules.

"Injury" occurs when evidence of it is still apparent at least 24 hours after the occurrence.

"Nonpublic school" means any school in which education is provided to a student, other than in a public school or in the home of the student.

"Preponderance of evidence" means reliable, credible evidence that is of greater weight than evidence offered in opposition to it.

“Public school” means any school directly supported in whole or in part by taxation.

“Reasonable force” means that force, and no more, that a reasonable person, in like circumstances, would judge to be necessary to prevent an injury or loss and can include deadly force if it is reasonable to believe that such force is necessary to avoid injury or risk to one’s life or safety or the life or safety of another, or it is reasonable to believe that such force is necessary to resist a like force or threat.

“School employee” means a person who works for pay or as a volunteer under the direction and control of:

1. The board of directors or any administrator of a public school district.
2. The board or authorities in control of a nonpublic school.
3. The board of directors or administrator of an agency called upon by a school official to provide services in an educational capacity to students.
4. A residential institution, not currently covered by Iowa Code chapter 232, providing educational services.

School employees are of two classes: licensed and unlicensed. A licensed employee holds an Iowa teacher’s certificate issued by the board of educational examiners.

“Sexual harassment” means unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature when:

1. Submission to the conduct is made either implicitly or explicitly a term or condition of the student’s education or benefits;
2. Submission to or rejection of the conduct is used as the basis for academic decisions affecting that student; or
3. The conduct has the purpose or effect of substantially interfering with a student’s academic performance by creating an objectively intimidating, hostile, or offensive education environment.

“Student” means a person enrolled in a public or nonpublic school or a prekindergarten program in a public or nonpublic school established under Iowa law, a child enrolled in a day care program operated by a public school or merged area school under Iowa Code section 279.49, or is a resident between the ages of 5 and 21 of a state facility providing incidental formal education.

281—102.2(280) Jurisdiction. To constitute a violation of these rules, acts of the school employee must be alleged to have occurred on school grounds, on school time, on a school-sponsored activity, or in a school-related context. To be investigable, the written report is to include basic information showing that the student allegedly abused is or was a student at the time of the incident, that the alleged act of the school employee resulted in injury or otherwise meets the definition of abuse in these rules, and that the person responsible for the act is currently a school employee.

If the report is not investigable due to the absence of any of the jurisdictional facts, the level-one investigator will dismiss the complaint as lacking jurisdiction and notify the person filing the report of the options remaining as listed in paragraph 102.10(1)“i.” The dismissal of a report of abuse for lack of jurisdiction does not bar school officials from further forms of investigation and disciplinary action.

281—102.3 Reserved.

281—102.4(280) Exceptions.

102.4(1) The following do not constitute physical abuse, and no school employee is prohibited from:

- a. Using reasonable and necessary force, not designed or intended to cause pain:
 - (1) To quell a disturbance or prevent an act that threatens physical harm to any person.
 - (2) To obtain possession of a weapon or other dangerous object within a pupil’s control.
 - (3) For the purposes of self-defense or defense of others as provided for in Iowa Code section 704.3.
 - (4) For the protection of property as provided for in Iowa Code section 704.4 or 704.5.
 - (5) To remove a disruptive pupil from class, or any area of school premises or from school-sponsored activities off school premises.
 - (6) To prevent a student from the self-infliction of harm.
 - (7) To protect the safety of others.

b. Using incidental, minor, or reasonable physical contact to maintain order and control.

102.4(2) In determining the reasonableness of the contact or force used, the following factors will be considered:

- a. The nature of the misconduct of the student, if any, precipitating the physical contact by the school employee.
- b. The size and physical condition of the student.

- c. The instrumentality used in making the physical contact.
- d. The motivation of the school employee in initiating the physical contact.
- e. The extent of injury to the student resulting from the physical contact.

102.4(3) The provisions of this rule apply only at the level-two stage of any investigation and will not be considered by a level-one investigator.

281—102.5(280) Duties of school authorities. The board of directors of a public school district and the authorities in control of a nonpublic school shall:

102.5(1) Annually identify at least one designated investigator and alternate investigator at an open public meeting.

102.5(2) Adopt written procedures that establish persons to whom the school authorities will delegate a second level of investigation beyond the level-one procedures specifically described in these rules, including law enforcement authorities or the county attorney's office, personnel of the local office of the department of health and human services, or private parties experienced and knowledgeable in the area of abuse investigation. The second-level investigator is not to be a school employee and is considered an independent contractor if remunerated for services rendered. The second-level investigator is to be made aware of any request under this rule and be offered an opportunity to decline the request, with reasons given.

The adopted procedures are to conform to these rules and include provisions for the safety of a student when, in the opinion of the investigator, the student would be placed in imminent danger if continued contact is permitted between the school employee and the student. These provisions will include the options of:

- a. Temporary removal of the student from contact with the school employee.
- b. Temporary removal of the school employee from service.
- c. Any other appropriate action permissible under Iowa law to ensure the student's safety.

The adopted written procedures will include a statement that the investigators appointed and retained under this chapter have access to any educational records of the allegedly abused student and access to the student for purposes of interviewing and investigating the allegation.

102.5(3) Annually publish the names or positions and telephone numbers or other contact information of the designated investigator and alternate:

- a. In the student handbook,
- b. In a local newspaper of general circulation, and
- c. Prominently post the same information in all buildings operated by the school authorities.

102.5(4) Arrange for in-service training for the designated investigator and alternate. Initial training should be undertaken within six months of appointing a level-one investigator or alternate. Follow-up training should be undertaken at least once every five years.

102.5(5) Place on administrative leave a school employee who is the subject of an investigation under this chapter of an alleged incident of physical or sexual abuse, once the level-one investigator has determined that the written complaint is investigable under rule 281—102.3(280).

102.5(6) Report to the board of educational examiners the results of an investigation that finds that the school employee's conduct constitutes a crime.

281—102.6(280) Filing of a report.

102.6(1) *Who may file.* Any person who has knowledge of an incident of abuse of a student committed by a school employee may file a report with the designated investigator.

102.6(2) *Content of report.* The report is to be in writing, signed, and, if signed by a minor, witnessed by a person of majority age and contain the following information:

- a. The full name, address, and telephone number of the person filing.
- b. The full name, age, address, telephone number, and attendance center of the student.
- c. The name and place of employment of the school employee(s) or agents who allegedly committed the abuse.
- d. A concise statement of the facts surrounding the incident, including date, time, and place of occurrence, if known.
- e. A list of possible witnesses by name, if known.
- f. Names and locations of any and all persons who examined, counseled or treated the student for the alleged abuse, including the dates on which those services were provided, if known.

102.6(3) *Incomplete reports.* The designated investigator shall aid parties requesting assistance in completing the report. An incomplete report will not be rejected unless a reasonable person would conclude that the missing information that

is unable to be provided by the reporter would render investigation futile or impossible. An unsigned (anonymous) or unwitnessed report may be investigated, but the designated investigator then has no duty to report findings and conclusions to the reporter.

281—102.7(280) Receipt of report. Any school employee receiving a report of alleged abuse of a student by a school employee shall immediately give the report to the designated investigator or alternate and not reveal the existence or content of the report to any other person.

281—102.8(280) Duties of designated investigator—physical abuse allegations.

102.8(1) Upon receipt of the report, the designated investigator will make and provide a copy of the report to the person filing, to the student's parent or guardian if different from the person filing and to the supervisor of the employee named in the report. The school employee named in the report is to receive a copy of the report at the time the employee is initially interviewed by any investigator. However, if this action would conflict with the terms of a contractual agreement between the employer and employee, the terms of the contract control.

102.8(2) Within five school days of receipt of a report of physical abuse, the designated investigator will conduct and complete an informal investigation after reviewing the report to determine that the allegations, if true, support the exercise of jurisdiction pursuant to rule 281—102.3(280).

102.8(3) If, in the investigator's opinion, the magnitude of the allegations in the report suggests immediate and professional investigation is necessary, the designated investigator may temporarily defer the level-one investigation. In cases of deferred investigation, the investigator shall contact appropriate law enforcement officials, the student's parent or guardian and the person filing the report, if different from the student's parent or guardian, documenting in writing the action taken.

102.8(4) The investigator shall interview the allegedly abused student, any witnesses or persons who may have knowledge of the circumstances contained in the report, and the school employee named in the report. The investigator will exercise prudent discretion in the investigative process to preserve the privacy interests of the individuals involved. To the maximum extent possible, the investigator shall maintain the confidentiality of the report.

102.8(5) The designated investigator's role is not to determine the guilt or innocence of the school employee, the applicability of the exceptions or reasonableness of the contact or force listed in rule 281—102.4(280). The designated investigator shall determine, by a preponderance of the evidence, whether it is likely that an incident took place between the student and the school employee. However, if the complaint has been withdrawn, the allegation recanted, or the employee has resigned, admitted the violation, or agreed to relinquish the employee's teacher's certificate or license, the designated investigator may, but need not, conclude the investigation at level one. The designated investigator will follow the applicable provisions of paragraphs 102.11(2) "b" and 102.11(2) "c" when resolution occurs at level one.

The level-two investigator appointed, contracted, requested or retained under subrule 102.5(2), when called upon for further investigation, will consider the applicability of the exceptions listed in rule 281—102.4(280) and the reasonableness of the contact or force used under subrule 102.4(2) in reaching conclusions as to the occurrence of physical abuse as defined by these rules.

102.8(6) Within 15 calendar days of receipt of the report, the designated investigator will complete a written investigative report, unless investigation was temporarily deferred.

281—102.9(280) Duties of designated investigator—sexual abuse allegations.

102.9(1) Upon receipt of the report, the designated investigator will make and provide a copy of the report to the person filing the report, to the student's parent or guardian if different from the person filing the report, and to the supervisor of the employee named in the report. The school employee named in the report shall receive a copy of the report at the time the employee is initially interviewed by any investigator. However, if this action would conflict with the terms of a contractual agreement between the employer and employee, the terms of the contract control. The designated investigator shall not interview the school employee named in a report of sexual abuse until after a determination that jurisdiction exists is made, the allegedly abused student has been interviewed, and a determination is made that the investigation will not be deferred under subrule 102.9(5).

102.9(2) Upon receipt of a report of sexual abuse or other notice of an allegation of sexual abuse, the designated investigator shall review the facts alleged to determine that the allegations, if true, support the exercise of jurisdiction pursuant to rule 281—102.3(280).

102.9(3) The investigator shall notify the parent, guardian, or legal custodian of a child in prekindergarten through grade six of the date and time of the interview and of the right to be present or to see and hear the interview or to send a representative in the parent's, guardian's, or legal custodian's place. The investigator shall interview the allegedly abused student as soon as possible, but in no case later than five days from the receipt of a report or notice of the allegation of sexual abuse. The investigator may record the interview electronically.

The investigator shall exercise prudent discretion in the investigative process to preserve the privacy interests of the individuals involved. To the maximum extent possible, the investigator shall maintain the confidentiality of the report.

102.9(4) The designated investigator's role is not to determine the guilt or innocence of the school employee. The designated investigator shall determine, by a preponderance of the evidence and based upon the investigator's training and experience and the credibility of the student, whether it is likely that an incident took place between the student and the school employee. However, if the complaint has been withdrawn, the allegation recanted, or the employee has resigned, admitted the violation, or agreed to relinquish the employee's teacher's certificate or license, the designated investigator may, but need not, conclude the investigation at level one. The designated investigator will follow the applicable provisions of paragraphs 102.11(2) "b" and 102.11(2) "c" when resolution occurs at level one.

102.9(5) If, in the investigator's opinion, it is likely that an incident in the nature of sexual abuse as defined by Iowa Code chapter 709 or section 728.12(1) took place, the investigator shall temporarily defer further level-one investigation. In cases of deferred investigation, the investigator shall immediately contact appropriate law enforcement officials, notifying the student's parent or guardian, and the person filing the report, if different from the student's parent or guardian, of the action taken.

If, in the investigator's opinion, an incident occurred that would not constitute sexual abuse as defined in Iowa Code chapter 709 or sexual exploitation as defined by Iowa Code section 728.12(1), but that was in the nature of inappropriate, intentional sexual behavior by the school employee, further investigation is warranted. The investigator may proceed to interview the school employee named in the report. Prior to interviewing any collateral sources who may have knowledge of the circumstance contained in the report, the investigator will provide notice of the impending interview of student witnesses who are in prekindergarten through grade six, to their parent, guardian, or legal custodian, and may provide notice to the parent or guardian of older students, prior to interviewing those students.

If, in the investigator's opinion, the allegation of sexual abuse is unfounded either because the conduct did not occur or the conduct did not meet the definition of abuse in these rules, further investigation is not warranted. The investigator shall notify the student's parent or guardian, the person filing the report, if different from the student's parent or guardian, and the school employee named in the report of this conclusion in a written investigative report.

102.9(6) Within 15 calendar days of receipt of the report or notice of alleged sexual abuse, the designated investigator will complete a written investigation report unless the investigation was temporarily deferred.

281—102.10(280) Content of investigative report.

102.10(1) The written investigative report is to include:

- a. The name, age, address, and attendance center of the student named in the report.
- b. The name and address of the student's parent or guardian and the name and address of the person filing the report, if different from the student's parent or guardian.
- c. The name and work address of the school employee named in the report as allegedly responsible for the abuse of the student.
- d. An identification of the nature, extent, and cause, if known, of any injuries or abuse to the student named in the report.
- e. A general review of the investigation.
- f. Any actions taken for the protection and safety of the student.
- g. A statement that, in the investigator's opinion, the allegations in the report are either:
 - (1) Unfounded. (It is not likely that an incident, as defined in these rules, took place), or
 - (2) Founded. (It is likely that an incident took place.)
- h. The disposition or current status of the investigation.
- i. A listing of the options available to the parents or guardian of the student to pursue the allegations. These options include:
 - (1) Contacting law enforcement.
 - (2) Contacting private counsel for the purpose of filing a civil suit or complaint.

(3) Filing a complaint with the board of educational examiners if the school employee is certificated.

102.10(2) The investigator shall retain the original and provide a copy of the investigative report to the school employee named in the report, the school employee's supervisor and the named student's parent or guardian. The person filing the report, if not the student's parent or guardian, shall be notified only that the level-one investigation has been concluded and of the disposition or anticipated disposition of the case.

281—102.11(280) Founded reports—designated investigator's duties.

102.11(1) The investigator shall notify law enforcement authorities in founded cases of serious physical abuse and in any founded case of sexual abuse under Iowa Code chapter 709 or sexual exploitation under Iowa Code section 728.12(1). In founded cases of less serious physical incidents or sexual incidents not in the nature of statutory sexual abuse or exploitation as defined by Iowa law, the investigator shall arrange for the level-two investigator to carry out a professional investigation unless the level-one investigation has resulted in a final disposition of the investigation. In addition, the designated investigator shall give a copy of the investigative report to the employee's supervisor and document all action taken.

102.11(2) Upon receipt of the level-two investigator's report under rule 281—102.12(280) or upon resolution of the investigation at level one, the designated investigator will:

a. Forward copies of the level-two investigator's report to the student's parent or guardian, the school employee named in the complaint, and the school employee's supervisor; notify the person filing the report, if different from the student's parent or guardian, of the disposition of the case or current status of the investigation;

b. File a complaint against the school employee who has been found to have physically or sexually abused a student, if that employee holds a teaching certificate, coaching authorization, or practitioner license, with the board on behalf of the school or district by obtaining the superintendent's signature on the complaint in cases where the level-two investigator or law enforcement officials have concluded abuse occurred as defined in these rules or where the employee has admitted the violation or agreed to surrender the employee's certificate or license. The designated investigator has discretion to file a complaint with the board in situations where the employee has resigned as a result of the allegation or investigation but has not admitted that a violation occurred. In the event an employee holding a school bus driver permit has been found to have physically or sexually abused a student, the designated investigator shall file a written complaint with the school transportation consultant at the department of education; the designated investigator shall file a written complaint with the local school board in founded cases involving other nonlicensed school employees; and

c. Arrange for counseling services for the student on request of the student, or the student's parent or guardian.

281—102.12(280) Level-two investigator's duties.

102.12(1) Upon referral by the designated investigator, the level-two investigator appointed, contracted, requested or retained under subrule 102.5(2) shall review the report of abuse and the designated investigator's report, if any, promptly conduct further investigation and create a written narrative report. The level-two investigator's report shall state:

a. Conclusions as to the occurrence of the alleged incident; and

b. Conclusions as to the applicability of the exceptions to physical abuse listed in rule 281—102.4(280); or

c. Conclusions as to the nature of the sexual abuse, if any; and

d. Recommendations regarding the need for further investigation.

102.12(2) The written report shall be delivered to the designated investigator as soon as practicable.

102.12(3) The level-two investigator shall exercise prudent discretion in the investigative process to preserve the privacy interests of the individuals involved. To the maximum extent possible, the level-two investigator shall maintain the confidentiality of the report.

281—102.13(280) Retention of records.

102.13(1) Any record created by an investigation will be handled according to formally adopted or bargained policies on the maintenance of personnel or other confidential records. Notes, tapes, memoranda, and related materials compiled in the investigation will be retained by the public or nonpublic school for a minimum of two years.

102.13(2) Unfounded reports shall not be placed in an employee's personnel file. If a report is founded at level one and unfounded at level two, the founded report from the level-one investigator shall be removed immediately upon receipt of an unfounded report from the level-two investigator.

281—102.14(280) Substantial compliance. Because investigative procedures seldom allow for rigid observance of the protocol, substantial compliance with the rules is required with the overriding goal of reaching a fair and unbiased resolution of the complaint.

These rules are intended to implement Iowa Code section 280.17.