

## **BLIND, DEPARTMENT FOR THE[111]**

[Prior to 7/1/87, see Commission for the Blind[160] Chs 1 to 10]

The Division for the Blind was created within the Department of Human Rights[421] by 1986 Iowa Acts, chapter 1245  
Renamed Department for the Blind, 1988 Iowa Acts, Senate File 2310, sections 29 to 31; section 31 of the Act renumbered sections  
601K.121 to 601K.127 as a new chapter.

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CHAPTER 1  
ADMINISTRATIVE ORGANIZATION AND PROCEDURES

[Prior to 7/1/87, see Blind, Commission for[160] Ch 1; rule 3.6; Ch 9]  
[Prior to 9/21/88, see Blind, Division for the[423] Ch 1; Ch 2; Ch 12]

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

**111—1.1(216B) Authority.** There is established a department for the blind which shall carry out policies and programs as determined by the commission for the blind.

**111—1.2(216B) History and function.** To respond to the unique needs of the blind of Iowa, the general assembly established the Iowa commission for the blind on April 1, 1925. Although specific programs for the blind have varied in recent years, the basic mission to promote positive attitudes toward blindness has remained constant. As a result of state government reorganization in 1986, the commission for the blind became a division of the department of human rights. However, the 72nd General Assembly restored the commission's separate status by establishing a department for the blind in 1988.

**111—1.3(216B) Location and information.** The central office of the department is located at 524 Fourth Street, Des Moines, Iowa 50309-2364, telephone (515)281-1333, (incoming WATS number (800)362-2587).

[ARC 0461C, IAB 11/28/12, effective 1/2/13]

**111—1.4(216B) Definitions.** The following definitions apply to the rules of the department for the blind:

*"Blind"* or *"blindness,"* except as applicable to the business enterprises program, refers to the condition of an individual who meets one or more of the following criteria: (1) vision not more than 20/200 central visual acuity in the better eye, with ordinary corrective lenses, or a field defect in which the peripheral field has contracted to an extent that the widest diameter of visual field subtends to an angular distance of not greater than 20 degrees; (2) a combination of loss of visual acuity and loss of visual field which imposes an employment handicap which is substantially that of a blind person; (3) medical prognosis indicating a progressive loss of sight which will terminate in the condition described in criteria one; or (4) a visual impairment which by agreement of the division of vocational rehabilitation services of the Iowa department of education and the department is such that the individual can be best served by the department.

*"Commission"* means the three-member statutory commission for the blind.

*"Dangerous weapon"* means any instrument or device designed primarily for use in inflicting death or injury upon a human being or animal, and which is capable of inflicting death upon a human being when used in the manner for which it was designed. Additionally, any instrument or device of any sort whatsoever which is actually used in such a manner as to indicate that the person possessing the instrument or device intends to inflict death or serious injury upon the other, and which, when so used, is capable of inflicting death upon a human being, is a dangerous weapon. Dangerous weapons include, but are not limited to, any offensive weapon as defined in Iowa Code section 724.1, pistol, revolver, or other firearm, dagger, razor, stiletto, switchblade knife, or knife having a blade exceeding five inches in length.

*"Department"* means the department for the blind. The department is the state licensing agency for vending facilities under the Randolph-Sheppard Act.

*"Director"* means the director of the department for the blind.

*"Division"* means one of the principal subunits of the department for the blind.

*"Extreme medical risk"* means a risk of substantially increasing functional impairment or risk of death if medical services are not expeditiously provided.

*"Facilities"* means the premises at 524 Fourth Street, Des Moines, Iowa, and any other space occupied by the department for the blind.

*"Program administrator"* means the chief of each of the divisions of the department for the blind.

*"Public"* means a person who is not employed by the state of Iowa.

*"Staff"* means individuals employed by the department for the blind.

*"State"* means the state of Iowa.

[ARC 0461C, IAB 11/28/12, effective 1/2/13]

**111—1.5(216B) Commission.** The duties and powers of the commission are as delineated in Iowa Code sections 216B.3 and 216D.3.

**1.5(1) Meetings.** The commission shall meet as often as necessary to conduct business expeditiously and efficiently. To the maximum extent practicable, meetings will be held outside normal working hours to encourage attendance.

**1.5(2) Chairperson.** At the first regularly scheduled meeting of each calendar year, the commission shall elect a chairperson.

**1.5(3) Notice.** Notice of meetings, including the proposed agenda, will be posted at all offices of the department. Persons wishing to receive notice of meetings may file a request with the office of the director.

**111—1.6(216B) Director.** As the chief administrative officer for the department, the director shall be responsible for implementation of commission policies and for administration of programs and services in compliance with applicable federal and state laws and regulations.

**111—1.7(216B) Divisions.** The director has established the following divisions of the department:

1. Adult orientation and adjustment center
2. Business enterprises program
3. Field operations
4. Library for the blind and physically handicapped

**111—1.8(216B) Private association activity of staff.** Staff shall not, on a significant regular basis, perform work for private associations or organizations (including organizations of or for the blind) during working hours or with use of department facilities unless arrangements have been formalized through a 28E agreement approved by the commission. Significant organizational activities prohibited in the absence of a formal 28E agreement include, but are not limited to: electioneering for organizational office, processing memberships, collecting dues, arranging for meetings and conventions, fund-raising, canvassing, leafleting, picketing, preparing organizational mailings, and other activities of a purely organizational nature which are unrelated to official staff duties.

However, the department encourages staff to maintain frequent contact with blind individuals and organizations of the blind as well as civic, social, fraternal, and professional groups interested in working with blind individuals.

This rule is not intended to discourage telephone conversations and correspondence with individuals or attendance (with supervisory approval) at meetings of blind or related associations or organizations.

**111—1.9(216B) Authorization for use of facilities.** Department facilities are available for the use of groups of blind individuals or other groups or organizations interested in working with blind individuals when the activity does not interfere with the conduct of department business. Authorization for the use of facilities must be obtained from the director or designee.

**111—1.10(216B) Joint activities.** When use of the department facility or the activity of staff is expected to be continual or significant, the department may enter into an agreement with any appropriate public or private entity pursuant to Iowa Code chapter 28E. The agreement must specify the purpose of the arrangement; the specific use of the facility or the specific activity of staff which is involved, as appropriate; remuneration (if appropriate); and any other necessary arrangements.

**111—1.11(216B) Administration of the gifts and bequests fund.** Pursuant to Iowa Code section 216B.3(8), there is established a gifts and bequests fund.

**1.11(1) Gifts and bequests fund.** The gifts and bequests fund is established primarily to provide direct financial assistance in the form of grants or loans to blind Iowans which will materially assist in independent living or vocational success or to provide department services or support services for which other funds are not available. Grants or loans may not be given for the purpose of continuing support.

*a. Use for department operations.* Use of gifts and bequests for routine, ongoing department operations must be approved by the commission.

*b. Eligibility.* Recipients of grants or loans must be blind individuals, as defined in rule 1.4(216B), who are residents of the state and whom the director or commission has determined to demonstrate a need for assistance.

*c. Application process.* Applications must be submitted to the director or designee for review. Applications not exceeding \$2,500 may be approved by the director or designee. Applications exceeding \$2,500 shall not be subject to approval or disapproval by the director or designee but shall be submitted to the commission for approval.

**1.11(2) *Vending facilities fund.*** The vending facilities fund is established to provide low interest loans to active licensed vendors. The director may approve loans in any amount from these moneys for use as start-up capital or for the purchase of inventory. Upon approval, the director will establish a repayment schedule.

**1.11(3) *Availability of records.*** Names of applicants or recipients of grants or loans from these funds are confidential records under 111—subrule 13.13(2). Disclosure may be made only for routine use as delineated in rule 111—13.10(17A,22).

**1.11(4) *Deposit of funds.*** Rescinded IAB 6/26/02, effective 7/31/02.

**1.11(5) *Record keeping.*** Rescinded IAB 6/26/02, effective 7/31/02.

#### **111—1.12(216B) Procurement.**

**1.12(1)** The procurement of goods and services for clients of the department shall be in accordance with the requirements of informed choice as defined in 34 CFR 361.52 (as published in the Federal Register on January 22, 2001).

**1.12(2)** Procurement of goods. Except as provided in 1.12(1) above, the procurement of goods shall be conducted in accordance with procurement standards and procedures established at 34 CFR 80.36 (effective July 6, 2004) for state government grantees.

[ARC 0461C, IAB 11/28/12, effective 1/2/13]

#### **111—1.13(216B) Department facility operations.**

**1.13(1) *Dangerous weapons.*** No member of the public shall carry a dangerous weapon in department facilities. This provision applies to any member of the public whether or not the individual possesses a valid Iowa permit to carry weapons. This provision does not apply to:

*a.* A peace officer as defined in Iowa Code section 801.4 or a member of the armed forces of the United States or of the national guard, when the person's duties or lawful activities require or permit possession of a dangerous weapon.

*b.* A person possessing a valid Iowa professional permit to carry a weapon whose duties require that person to carry a dangerous weapon.

*c.* A person who possesses a dangerous weapon for any purpose authorized by a state agency to further the statutory or regulatory responsibilities of that agency. An authorization issued pursuant to this paragraph shall not become effective until it has been issued in writing to the person or persons to whom it applies and until copies of the authorization have been received by the director and by the commissioner of public safety.

*d.* Members of recognized military veterans organizations performing honor guard service as provided in Iowa Code section 35A.12.

Violation of this subrule is a simple misdemeanor, pursuant to Iowa Code section 8A.322, and may result in the denial of access to a state building, filing of criminal charges or expulsion from the grounds of the department's facilities, or any combination thereof, of any individual who knowingly violates the subrule. In addition, any weapon found in the possession of a member of the public in violation of this subrule may be confiscated. Charges may be filed under any other criminal statute if appropriate. Officers employed by or under the supervision of the department of public safety shall have the authority to enforce this subrule. Peace officers employed by other agencies shall have the authority to enforce this subrule at the request of the commissioner of public safety or in response to a request for assistance from an officer employed by the department of public safety or at the request of the director or the director's designee.

**1.13(2)** *Building access and security.* The department shall take reasonable and appropriate measures to ensure the safety of persons and property in department facilities. These measures may include, but are not limited to, the following:

*a.* Requiring any member of the public entering department facilities to (1) provide identification upon request; (2) allow the member of the public to be scanned with metal detecting equipment; and (3) allow any parcel, package, luggage, purse, or briefcase that the person is bringing into department facilities to be examined with X-ray equipment or to have the contents thereof examined, or both.

*b.* Requiring any member of the public who is inside department facilities outside normal business hours, other than when facilities are open to the public during a scheduled event, to provide identification and to state the nature of the person's business in the facility. A member of the public who is in department facilities outside normal business hours, other than during a scheduled event, and who does not have authorization to be on the premises may be required to exit the building and be escorted from the building.

*c.* Limiting public access to department facilities to selected entrances. Access to each building through at least one entrance accessible to persons with disabilities shall be maintained.

*d.* Limiting hours during which public access to department facilities is allowed.

*e.* Confiscating any container including, but not limited to, packages, bags, briefcases, or boxes that are left in public areas when department facilities are not open to the public. Any confiscated container may be searched or destroyed, or both, or may be returned to the owner. Any container that is left unattended in a public area during hours in which department facilities are open to the public may be examined.

Violation of this subrule is a simple misdemeanor, pursuant to Iowa Code section 8A.322, and may result in the denial of access to a state building, filing of criminal charges or expulsion from department facilities, or any combination thereof, of the individual who knowingly violates the subrule. Charges may be filed under any other criminal statute if appropriate. Officers employed by or under the supervision of the department of public safety shall have the authority to enforce this subrule. Peace officers employed by other agencies shall also have the authority to enforce this subrule.

**1.13(3)** *Access barriers.* The director may cause the temporary or permanent placement of barricades, ropes, signs, or other barriers to limit access to certain parts of department facilities. Unauthorized persons beyond the barriers may be removed with the assistance of law enforcement officers or charged with a criminal offense if appropriate, or both.

[ARC 0461C, IAB 11/28/12, effective 1/2/13]

These rules are intended to implement Iowa Code chapter 216B.

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CHAPTER 2  
PERSONNEL

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

**111—2.1(216B) Qualifications of personnel.**

**2.1(1)** *State-licensed professions.* Persons employed in positions for which licensure is required by the state are required to hold the appropriate license at the time of hire and maintain it throughout their term of employment even when the Iowa Code exempts individuals employed by a state agency from the licensure requirement.

**2.1(2)** *Service specialist for the blind 2 and senior service specialist for the blind 1 (vocational rehabilitation counselor).* Certification shall be required of all vocational rehabilitation counselors employed by the department.

*a.* At the time of hire into the position, an individual holding at least a bachelor's degree from an accredited college or university and one year of work experience shall be granted provisional certification. Exceptions regarding education and experience can only be made by the commission for the blind upon the recommendation of the director. Provisional certification shall be recognized for a maximum period of 18 months.

*b.* An individual may obtain full certification as a vocational rehabilitation counselor by demonstrating competency in the following areas.

(1) Knowledge, understanding, and implementation of the department's positive philosophy of blindness.

(2) Knowledge of the department's programs.

(3) Skills in career planning and development.

(4) Knowledge of placement techniques and practices.

(5) Knowledge of occupational information, job site evaluation, and job analysis.

(6) Knowledge and development of alternative techniques of blindness.

(7) Knowledge of rehabilitation technology services.

(8) Knowledge of disability and related issues.

(9) Advocacy.

(10) Case management.

(11) Adjustment to blindness counseling.

(12) Assessment of consumer needs.

(13) Public education and outreach.

(14) Teamwork and problem solving.

*c.* An individual holding at least a bachelor's degree from an accredited college or university, who has been employed by the department as a service specialist for the blind 2 or senior service specialist for the blind 1 (vocational rehabilitation counselor) for a minimum of six months on the date this rule is finalized, shall be considered to be a fully certified vocational rehabilitation counselor, as long as the individual maintains unbroken employment with the department in that classification.

**2.1(3)** *Senior service specialist for the blind 1 (vocational rehabilitation teacher).* Certification shall be required of all vocational rehabilitation teachers employed by the department.

*a.* At the time of hire into the position, an individual holding at least a bachelor's degree from an accredited college or university and one year of work experience shall be granted provisional certification. Exceptions regarding education and experience can only be made by the commission for the blind upon recommendation of the director. Provisional certification shall be recognized for a maximum period of 18 months.

*b.* An individual may obtain full certification as a vocational rehabilitation teacher by demonstrating competency in the following areas.

(1) Knowledge, understanding, and implementation of the department's positive philosophy of blindness.

(2) Knowledge of the department's programs.

- (3) Assessment of consumer needs.
- (4) Teaching skills and practices.
- (5) Knowledge and development of alternative techniques of blindness.
- (6) Knowledge of rehabilitation technology services.
- (7) Knowledge and development of community resources.
- (8) Knowledge of disability and related issues.
- (9) Advocacy.
- (10) Case management.
- (11) Adjustment to blindness counseling.
- (12) Public education and outreach.
- (13) Teamwork and problem solving.

c. An individual holding at least a bachelor's degree from an accredited college or university, who has been employed by the department as a service specialist for the blind 2 (vocational rehabilitation teacher) for a minimum of six months on the date this rule is finalized, shall be considered to be a fully certified vocational rehabilitation teacher, as long as the individual maintains unbroken employment with the department in that classification.

**2.1(4)** *Senior service specialist for the blind 1 (orientation center teacher)*. Certification shall be required of all orientation center teachers employed by the department.

a. At the time of hire into the position, an individual holding at least a bachelor's degree from an accredited college or university and one year of paid employment in a program of rehabilitation, education of the blind, elementary or secondary education or related fields shall be granted provisional certification. Exceptions regarding education and experience can only be made by the commission for the blind upon recommendation of the director. Provisional certification shall be recognized for a maximum period of 18 months.

b. An individual may obtain full certification as an orientation center teacher by demonstrating competency in the following areas.

- (1) Knowledge, understanding, and implementation of the department's positive philosophy of blindness.
- (2) Knowledge of the department's programs.
- (3) Knowledge and development of alternative techniques of blindness.
- (4) Technical knowledge of subject area(s) taught.
- (5) Teaching skills and practices.
- (6) Adjustment to blindness counseling.
- (7) Understanding of career planning and development.
- (8) Knowledge of rehabilitation technology services.
- (9) Knowledge of disability and related issues.
- (10) Advocacy.
- (11) Teamwork and problem-solving.
- (12) Assessment of consumer needs.
- (13) Public education and outreach.

c. An individual holding at least a bachelor's degree from an accredited college or university, who has been employed by the department as a senior service specialist for the blind 1 (orientation center teacher) for a minimum of six months on the date this rule is finalized, shall be considered to be a fully certified orientation center teacher, as long as the individual maintains unbroken employment with the department in that classification.

[ARC 0461C, IAB 11/28/12, effective 1/2/13]

These rules are intended to implement Iowa Code chapter 216B.

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[Filed ARC 0461C (Notice ARC 0181C, IAB 6/27/12), IAB 11/28/12, effective 1/2/13]

CHAPTER 3  
DEPARTMENT PROCEDURE FOR RULE MAKING

[Prior to 9/21/88, see Blind, Division for the[423] Ch 3]

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

**111—3.1(17A) Applicability.** Except to the extent otherwise expressly provided by statute, all rules adopted by the commission are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

**111—3.2(17A) Advice on possible rules before notice of proposed rule adoption.** In addition to seeking information by other methods, the department may, before publication of a Notice of Intended Action as provided in Iowa Code section 17A.4(1)“a,” solicit comments from the public on a subject matter of possible rule making by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when and how persons may comment.

**111—3.3(17A) Public rule-making docket.**

**3.3(1) Docket maintained.** The department shall maintain a current public rule-making docket.

**3.3(2) Anticipated rule making.** The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed “anticipated” from the time a draft of proposed rules is distributed for internal discussion within the department or from the time of announcement at a meeting of the commission. For each anticipated rule-making proceeding, the docket shall contain a listing of the precise subject matter which may be submitted for consideration by the commission for subsequent proposal under the provisions of Iowa Code section 17A.4(1)“a,” the name and address of department personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the department of that possible rule. The department may also include in the docket other subjects upon which public comment is desired.

**3.3(3) Pending rule-making proceedings.** The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, pursuant to Iowa Code section 17A.4(1)“a,” to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or the rule becoming effective. For each rule-making proceeding, the docket shall indicate:

- a. The subject matter of the proposed rule.
- b. A citation to all published notices relating to the proceeding.
- c. Where written submissions on the proposed rule may be inspected.
- d. The time during which written submissions may be made.
- e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made.
- f. Whether a written request for the issuance of a regulatory analysis, or a concise statement of reasons has been filed, whether such an analysis or statement or a fiscal impact statement has been issued, and where any such written request, analysis, or statement may be inspected.
- g. The current status of the proposed rule and any department determinations with respect thereto.
- h. Any known timetable for department decisions or other action in the proceeding.
- i. The date of the rule’s adoption.
- j. The date of the rule’s filing, indexing and publication.
- k. The date on which the rule will become effective.
- l. Where the rule-making record may be inspected.

**111—3.4(17A) Notice of proposed rule making.**

**3.4(1) Contents.**

a. At least 35 days before the adoption of a rule, the department shall cause a Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

- (1) A brief explanation of the purpose of the proposed rule.
- (2) The specific legal authority for the proposed rule.
- (3) Except to the extent impracticable, the text of the proposed rule.
- (4) Where, when and how persons may present their views on the proposed rule.
- (5) Where, when and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

b. Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the department shall include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the department for the resolution of each of those issues.

c. To facilitate transcription into alternative media, the complete text of the proposed rule shall be published in the Notice of Intended Action whenever possible.

**3.4(2)** *Incorporation by reference.* A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to incorporation by reference of other materials in an adopted rule that are contained in subrule 3.12(2).

**3.4(3)** *Copies of notices.* Persons desiring to receive copies of future Notices of Intended Action by subscription must file with the department a written request indicating the name and address to which such notices should be sent. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the department shall mail or electronically transmit a copy of that notice to subscribers who have filed a written request for either mailing or electronic transmittal with the department for Notices of Intended Action. The written request shall be accompanied by payment of a subscription price which may cover the full cost of the subscription service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for a period of one year.

**3.4(4)** *Provision in alternative media.* Mailed copies of Notices of Intended Action shall be provided in standard print format, unless an individual requests provision of the notices in alternative media. Notices in the alternative media shall be provided in a timely manner.

[ARC 0461C, IAB 11/28/12, effective 1/2/13]

### **111—3.5(17A) Public participation.**

**3.5(1)** *Written comments.* For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to the Administrative Rules Coordinator, Department for the Blind, 524 Fourth Street, Des Moines, Iowa 50309 or the person designated in the Notice of Intended Action.

**3.5(2)** *Oral proceedings.* The department may, at any time, schedule an oral proceeding on a proposed rule. The department shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the department by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. The request must also contain the following information:

1. A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.
2. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.
3. A request by an agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing that request.

The department may waive technical compliance with these procedures.

**3.5(3)** *Conduct of oral proceedings.*

*a. Applicability.* This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1) "b" as amended by 1998 Iowa Acts, chapter 1202, section 8.

*b. Scheduling and notice.* An oral proceeding on a proposed rule may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in the Iowa Administrative Bulletin. The notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

*c. Presiding officer.* The director, the department's administrative rules coordinator or a division administrator of the department, as designated by the director, shall preside at the oral proceeding on the proposed rule. If the director does not preside, the presiding officer shall prepare a memorandum for consideration by the director summarizing the contents of the presentations made at the oral proceeding unless the director determines that a memorandum is unnecessary because the director will personally listen to or read the entire transcript of the oral proceeding.

*d. Conduct of proceeding.* At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the department at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

(1) At the beginning of the oral proceeding, the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the department decision to propose the rule. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(2) Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

(3) To facilitate the exchange of information, the presiding officer may, where time permits, open the floor to questions or general discussion.

(4) The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of the meeting.

(5) Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the department.

(6) The oral proceeding may be continued by the presiding officer to a later time without notice other than by announcement at the hearing.

(7) Participants in an oral proceeding shall not be required to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

(8) The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

**3.5(4) Additional information.** In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the department may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

**3.5(5) Accessibility.** The department shall schedule oral presentations in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the Administrative Office, Department for the Blind, (515)281-1333, Iowa WATS (800)362-2587, or TTY (515)281-1355, in advance to arrange access or other needed services.

**111—3.6(17A) Regulatory analysis.**

**3.6(1)** *Definition of small business.* A “small business” is defined in 1998 Iowa Acts, chapter 1202, section 10(7).

**3.6(2)** *Mailing list.* Small businesses or organizations of small businesses may be registered on the department’s small business impact list by making a written application to the department administrative rules coordinator. The application for registration shall state:

- a. The name of the small business or organization of small businesses.
- b. Its address.
- c. The name of a person authorized to transact business for the applicant.
- d. A description of the applicant’s business or organization. An organization representing 25 or more persons who qualify as a small business shall indicate that fact.
- e. Whether the registrant desires copies of Notices of Intended Action at cost, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The department may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of 25 or more small businesses. The department may periodically send a letter to each registered small business or organization of small businesses asking whether that business or organization of small businesses wishes to remain on the registration list. The name of a small business or organization of small businesses will be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

**3.6(3)** *Time of mailing.* Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the department shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business, adopted in reliance upon Iowa Code section 17A.4(2), the department shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

**3.6(4)** *Qualified requesters for regulatory analysis—economic impact.* The department shall issue a regulatory analysis of a proposed rule that conforms to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2a), after a proper request from:

- a. The administrative rules coordinator; or
- b. The administrative rules review committee.

**3.6(5)** *Qualified requesters for regulatory analysis—business impact.* The department shall issue a regulatory analysis of a proposed rule that conforms to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2b), after a proper request from:

- a. The administrative rules review committee;
- b. The administrative rules coordinator;
- c. At least 25 or more persons who sign the request provided that each represents a different small business; or
- d. An organization representing at least 25 small businesses. That organization shall list the name, address and telephone number of not less than 25 small businesses it represents.

**3.6(6)** *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis, the department shall adhere to the time lines described in 1998 Iowa Acts, chapter 1202, section 10(4).

**3.6(7)** *Contents of request.* A request for a regulatory analysis is made when it is mailed or delivered to the department. The request shall be in writing and satisfy the requirements of 1998 Iowa Acts, chapter 1202, section 10(1).

**3.6(8)** *Contents of concise summary.* The contents of the concise summary shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(4) and (5).

**3.6(9)** *Publication of a concise summary.* The department shall make available, to the maximum extent feasible, copies of the published summary in conformance with 1998 Iowa Acts, chapter 1202, section 10(5).

**3.6(10)** *Regulatory analysis contents—administrative rules review committee or administrative rules coordinator.* When a regulatory analysis is issued in response to a written request from the administrative

rules review committee or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2a), unless a written request expressly waives one or more of the items listed in the section.

**3.6(11) *Regulatory analysis contents—substantial impact on small business.*** When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2b).

**111—3.7(17A,25B) Fiscal impact statement.**

**3.7(1)** A proposed rule that mandates additional combined expenditures exceeding \$100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services must be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement must satisfy the requirements of Iowa Code section 25B.6.

**3.7(2)** If the department determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the department shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

**111—3.8(17A) Time and manner of rule adoption.**

**3.8(1) *Time of adoption.*** The commission shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action or the end of oral proceedings thereon, the commission shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

**3.8(2) *Consideration of public comment.*** Before the adoption of a rule, the commission shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding, any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

**3.8(3) *Reliance on department expertise.*** Except as otherwise provided by law, the commission may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

**111—3.9(17A) Variance between adopted rule and published notice of proposed rule adoption.**

**3.9(1)** The commission shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

- a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and
- b. The differences are a logical outgrowth of the contents of the Notice of Intended Action and the comments submitted in response thereto; and
- c. The Notice of Intended Action provided fair warning that the outcome of the rule-making proceeding could be the rule in question.

**3.9(2)** In determining whether the Notice of Intended Action provided fair warning that the outcome of the rule-making proceeding could be the rule in question, the department shall consider the following factors:

- a. The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests.
- b. The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action.
- c. The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

**3.9(3)** The department shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the department finds that

the differences between the adopted rule and the proposed rule are so insubstantial as to make the rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to the petitioner, the administrative rules coordinator and the administrative rules review committee within three days of its issuance.

**3.9(4)** Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the department to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

#### **111—3.10(17A) Exemptions from public rule-making procedures.**

**3.10(1)** *Omission of notice and comment.* To the extent the commission, for good cause, finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the commission may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The commission shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

**3.10(2)** *Categories exempt.* The following narrowly tailored categories of rules are exempted from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, or contrary to the public interest with respect to each and every member of the defined class:

Rules which are mandated by federal law or regulation are exempted from the usual public notice and public participation requirements in any situation where the commission has no option but to adopt specified rules or where federal funding is contingent upon the adoption of the rules. Notice and public participation would be unnecessary since the provisions of the law or regulation must be adopted in order to maintain federal funding and the commission would have no option in the rule which was adopted.

**3.10(3)** *Public proceedings on rules adopted without them.* The department may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule adopted in reliance upon subrule 3.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, a department, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the department shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 3.10(1). Such a petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding is commenced pursuant to this subrule, the commission may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 3.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

#### **111—3.11(17A) Concise statement of reasons.**

**3.11(1)** *General.* When requested by a person, either prior to adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the department shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and must be delivered to the Administrative Rules Coordinator, Department for the Blind, 524 Fourth Street, Des Moines, Iowa 50309. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

**3.11(2)** *Contents.* The concise statement of reasons shall contain:

- a. The reasons for adopting the rule;
- b. An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any such change;
- c. The principal reasons urged in the rule-making proceeding for and against the rule, and the reasons for overruling the arguments made against the rule.

**3.11(3)** *Time of issuance.* After a proper request, the department shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

**111—3.12(17A) Contents, style, and form of rule.**

**3.12(1) Contents.** Each rule adopted by the commission shall contain the text of the rule and, in addition:

- a. The date the commission adopted the rule.
- b. A brief explanation of the principal reasons for rule-making action if such reasons are required by 1998 Iowa Acts, chapter 1202, section 8, or the department in its discretion decides to include such reasons.
- c. A reference to all rules repealed, amended, or suspended by the rule.
- d. A reference to the specific statutory or other authority authorizing adoption of the rule.
- e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule.
- f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if such reasons are required by 1998 Iowa Acts, chapter 1202, section 8, or the department in its discretion decides to include such reasons.
- g. The effective date of the rule.

**3.12(2) Incorporation by reference.** The department may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the department finds that the incorporation of its text in the proposed or adopted rule would be unduly cumbersome, expensive or otherwise inexpedient. The reference in the proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The department may incorporate such matter by reference in a proposed or adopted rule only if the department makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from this department, and how and where copies may be obtained from an agency of the United States, this state, another state, or the organization, association or persons originally issuing the matter. The department shall retain permanently a copy of any materials incorporated by reference in a rule of the department.

If the department adopts standards by reference to another publication, it shall provide a copy of the publication containing the standards to the administrative rules coordinator for deposit in the state law library and may make the standards available electronically.

**3.12(3) References to materials not published in full.** When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive or otherwise inexpedient, the department shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the department. The department will provide a copy of the full text (at actual cost) upon request and shall make copies of the full text available for review at the state law library and may make the standards available electronically.

At the request of the administrative code editor, the department shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive or otherwise inexpedient.

To facilitate transcription into alternative media, the complete text of the proposed rule shall be published in the Notice of Intended Action whenever possible.

**3.12(4) Style and form.** In preparing its rules, the department shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

[ARC 0461C, IAB 11/28/12, effective 1/2/13]

**111—3.13(17A) Department rule-making record.**

**3.13(1) Requirement.** The department shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference must be available for public inspection.

**3.13(2) Contents.** The department rule-making record shall contain:

*a.* Copies of all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based and any file-stamped copies of department submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based.

*b.* Copies of any portions of the department's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based.

*c.* All written petitions, requests and submissions received by the department, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the department and considered by the director or the commission in formulation, proposal or adoption of the rule or the proceeding upon which the rule is based, except to the extent the department is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the department shall identify in the record the particular materials deleted and state the reasons for that deletion.

*d.* Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by the presiding officer summarizing the contents of those presentations.

*e.* A copy of any regulatory analysis or fiscal impact statement prepared for the proceeding upon which the rule is based.

*f.* A copy of the rule and any concise statement of reasons prepared for that rule.

*g.* All petitions for amendments of, or repeal or suspension of, the rule.

*h.* A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(2) by the administrative rules review committee, the governor, or the attorney general.

*i.* A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code section 17A.4(4), and any department response to that objection.

*j.* A copy of any significant written criticism of the rule, including a summary of any petitions for waiver of the rule.

*k.* A copy of any executive order concerning the rule.

**3.13(3) Effect of record.** Except as otherwise required by provision of law, the department rule-making record required by this rule need not constitute the exclusive basis for department action on the rule.

**3.13(4) Maintenance of record.** The department shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective or the date of the Notice of Intended Action.

**111—3.14(17A) Filing of rules.** The department shall file each rule adopted by the commission in the office of the administrative rules coordinator. The filing must be executed as soon after adoption as is practicable. At the time of filing, each rule must have attached to it any fiscal impact statement and any concise statement of reasons that were issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the department shall use the standard form prescribed by the administrative rules coordinator.

**111—3.15(17A) Effectiveness of rules prior to publication.**

**3.15(1) Grounds.** The commission may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The

department shall incorporate the required findings and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

**3.15(2) *Special notice.*** When the commission makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2) “b”(3), the department shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule’s indexing and publication. The term “all reasonable efforts” requires the department to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the department of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2) “b”(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule 3.15(2).

#### **111—3.16(17A) General statements of policy.**

**3.16(1) *Compilation, indexing, public inspection.*** The department shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(10) “a,” “c,” “f,” “g,” “h,” and “k.” Each addition to, change in, or deletion from the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(10) “f,” or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

**3.16(2) *Enforcement of requirements.*** A general statement of policy subject to the requirements of this rule shall not be relied on by the department to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 3.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

#### **111—3.17(17A) Review by department of rules.**

**3.17(1)** Any interested person, association, department, or political subdivision may submit a written request to the administrative rules coordinator requesting the department to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the department shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or the rule should be amended or repealed. The department may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

**3.17(2)** In conducting the formal review, the department shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the department’s findings regarding the rule’s effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by the department or granted by the department. The report shall describe alternative solutions to resolve the criticisms of the rule, the reason any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the department’s report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

These rules are intended to implement Iowa Code chapter 17A and Iowa Code section 25B.6.

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CHAPTER 4
PETITIONS FOR RULE MAKING

[Prior to 7/1/87, see Blind, Commission for[160] rule 3.1]
[Prior to 9/21/88, see Blind, Division for the[423] Ch 4]

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

111—4.1(17A) Petition for rule making. Any person or state agency may file a petition for rule making with the Department for the Blind, 524 Fourth Street, Des Moines, Iowa 50309. A petition is deemed filed when it is received by that office. The department must provide the petitioner with a file-stamped copy of the petition if the petitioner provides an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE DEPARTMENT FOR THE BLIND
Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter).
} PETITION FOR RULE MAKING

The petition must provide the following information:

- 1. 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 and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
2. A citation to any law deemed relevant to the department's authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner's arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
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.
6. Any request by petitioner for a meeting provided for by rule 4.4(17A).

4.1(1) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

4.1(2) The department may deny a petition because it does not substantially conform to the required form.

111—4.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The department may request a brief from the petitioner or from any other person concerning the substance of the petition.

111—4.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to Director, Department for the Blind, 524 Fourth Street, Des Moines, Iowa 50309-2364.

111—4.4(17A) Department consideration.

4.4(1) Forwarding of petition and meeting. Within 14 days after the filing of a petition, the department shall submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee. Upon request by the petitioner in the petition, the department shall schedule a brief and informal meeting between the petitioner and a member of the staff of the department or a member of the commission to discuss the petition. The department may request the petitioner to submit additional information or argument concerning the petition. Also, comments on the substance of the petition may be submitted to the department by any person.

4.4(2) Action on petition. Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the department shall, in writing, deny the petition and notify the petitioner of its

action and the specific grounds for the denial or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. Petitioner shall be deemed notified of the denial or grant of the petition on the date when the department mails or delivers the required notification to the petitioner.

**4.4(3)** *Denial of a petition for nonconformance with form.* Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the department's rejection of the petition.

These rules are intended to implement Iowa Code section 17A.7 as amended by 1998 Iowa Acts, chapter 1202, section 11.

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CHAPTER 5  
DECLARATORY ORDERS

[Prior to 7/1/87, see Blind, Commission for[160] rule 3.2]  
[Prior to 9/21/88, see Blind, Division for the[423] Ch 5]

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

**111—5.1(17A) Petition for declaratory order.** Any person may file a petition with the department for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the department at the Administrative Office, Department for the Blind, 524 Fourth Street, Des Moines, Iowa 50309-2364. A petition is deemed filed when it is received by that office. The department shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the department an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE DEPARTMENT FOR THE BLIND		
Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	}	PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders whose applicability is questioned and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner’s interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner’s knowledge, those questions have been decided by, are pending determination by, or are under investigation by any governmental entity.
7. 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 questions presented in the petition.
8. Any request by petitioner for a meeting provided for by rule 111—5.7(17A).

The petition must be dated and signed by the petitioner or the petitioner’s representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner’s representative, and a statement indicating the person to whom communications concerning the petition should be directed.

**111—5.2(17A) Notice of petition.** Within ten working days of receipt of a petition for a declaratory order, the department shall give notice of the petition to all persons not served by the petitioner pursuant to rule 111—5.6(17A) to whom notice is required by any provision of law.

**111—5.3(17A) Intervention.**

**5.3(1) Nondiscretionary intervention.** Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 15 working days of the filing of a petition for declaratory order and before the 30-day time period for department action under rule 111— 5.8(17A) shall be allowed to intervene in a proceeding for a declaratory order.

**5.3(2) Discretionary intervention.** Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the department.

**5.3(3) Filing and form of petition for intervention.** A petition for intervention shall be filed at the administrative office. A petition is deemed filed when it is received by that office. The department shall

provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and should substantially conform to the following form:

BEFORE DEPARTMENT FOR THE BLIND	
Petition by (Name of Original Petitioner) for a Declaratory Order to (Cite provisions of law cited in original petition).	} PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by any governmental entity.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

**111—5.4(17A) Briefs.** The petitioner or any intervenor may file a brief in support of the position urged. The department may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

**111—5.5(17A) Inquiries.** Inquiries concerning the status of a declaratory order proceeding may be made to the Director, Department for the Blind, 524 Fourth Street, Des Moines, Iowa 50309-2364.

**111—5.6(17A) Service and filing of petitions and other papers.**

**5.6(1) Service.** Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served by mailing or personal delivery upon each of the parties of record to the proceeding, and on all other persons identified as affected by or interested in the question presented, simultaneously with its filing. The party filing a document is responsible for service on all parties and other affected or interested persons. All documents filed shall indicate all parties or other persons served and the date and method of service.

**5.6(2) Filing.** All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Administrative Office, Department for the Blind, 524 Fourth Street, Des Moines, Iowa 50309-2364. All documents are considered filed upon receipt.

**111—5.7(17A) Consideration.** Upon request by the petitioner, the department must schedule a brief and informal meeting between the original petitioner, all intervenors, and a member of the staff of the department to discuss the questions raised. The department may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the department by any person.

**111—5.8(17A) Action on petition.**

**5.8(1) Time frame for action.** Within 30 days after receipt of a petition for a declaratory order, the director or the director's designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

**5.8(2) *Date of issuance of order.*** The date of issuance of an order or of a refusal to issue an order is the date of mailing of the order or refusal or the date of delivery if service is by other means unless another date is specified in the order.

**111—5.9(17A) Refusal to issue order.**

**5.9(1) *Reasons for refusal to issue order.*** The department shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially conform with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the department to issue an order.
3. The department does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other department or judicial proceeding that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a department decision already made.
9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.
10. The petitioner requests the department to determine whether a statute is unconstitutional on its face.

**5.9(2) *Action on refusal.*** A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final department action on the petition.

**5.9(3) *Filing of new petition.*** Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the department's refusal to issue an order.

**111—5.10(17A) Contents of declaratory order—effective date.** In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

**111—5.11(17A) Copies of orders.** A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

**111—5.12(17A) Effect of a declaratory order.** A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the department, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the department. The issuance of a declaratory order constitutes final department action on the petition.

**111—5.13(17A) Programs exempted.** The vocational rehabilitation services and business enterprises programs are required by federal regulations to conform to similar proceedings delineated by their

respective federal government grantor agencies. Therefore, the provisions of this chapter are not applicable to those programs.

These rules are intended to implement Iowa Code section 17A.9 as amended by 1998 Iowa Acts, chapter 1202, section 13.

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CHAPTER 6  
LIBRARY FOR THE BLIND AND PHYSICALLY HANDICAPPED

[Prior to 7/1/87, see Blind, Commission for[160] rule 2.4]

[Prior to 9/21/88, see Blind, Division for the[423] Ch 6]

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

**111—6.1(216B) Function.** The library for the blind and physically handicapped provides library services to Iowans who are blind, reading disabled and physically handicapped, as delineated in rule 6.3(216B), who cannot use information in standard print formats.

**111—6.2(216B) Services.** Services include, but are not limited to, provision and circulation of books, magazines and videos in braille, recorded cassette, digital audio, digital cartridge, electronic text, descriptive video, or large-type formats; provision and maintenance of playback equipment; transcription, production and duplication of standard print material into braille, digital audio, large print, or electronic text formats; and research, acquisition by loan or purchase, or production of instructional materials.

**6.2(1)** Transcription of standard print reading materials into alternative media. Transcription of standard print reading materials into the alternative media of braille, digital audio, large print, or electronic text shall be provided to the extent that resources are available and following research of the library for the blind and physically handicapped and other libraries, volunteer production agencies, and vendors which confirm that the requested item is not available in any alternative media which can be effectively used by the library patron; or that the item exists, but cannot be acquired by loan, purchase, or duplication. Priority will be given to requests which enable persons to meet a vocational or educational need. Transcription is one method of providing access to standard print reading materials, and will be used in combination with other resources in order to provide as much support as possible to each person requesting transcription services. Other requests will be honored contingent upon availability of resources.

**6.2(2)** Reserved.

[ARC 0461C, IAB 11/28/12, effective 1/2/13]

**111—6.3(216B) Eligibility.** The following persons are eligible for services:

Blind persons;

Physically handicapped persons—

1. Whose visual disability, with correction, regardless of visual measurement, prevents the reading of standard print material, or
2. Who are unable to read or unable to use standard print material as a result of physical limitations, or
3. Who have a reading disability resulting from organic dysfunction, and of sufficient severity, to prevent the reading of print material in a standard manner.

**6.3(1)** Library services are available to children and adults.

**6.3(2)** Eligibility will be determined in compliance with applicable federal and state laws prohibiting discrimination on the basis of age, race, creed, color, sex, national origin, religion, or disability.

**111—6.4(216B) Application procedures.** The Application and Certification of Eligibility for Library Services form must be completed, and must be signed by a competent authority.

**6.4(1)** In cases of blindness, visual disability or physical limitations, “competent authority” is defined as a doctor of medicine; doctor of osteopathy; ophthalmologist; optometrist; registered nurse; therapist; or member of the professional staff of a hospital, institution, public or welfare agency (i.e., a social worker, case worker, counselor, rehabilitation teacher or superintendent). In the absence of any of these, certification may be made by a professional librarian or by any person whose competence under specific circumstances is acceptable to the department and the Library of Congress.

**6.4(2)** In the case of reading disability from organic dysfunction, “competent authority” is defined as a doctor of medicine or doctor of osteopathy who may consult with colleagues in associated disciplines.

**6.4(3)** Applicants who use only large print materials must obtain the certification of a competent authority.

[ARC 0461C, IAB 11/28/12, effective 1/2/13]

**111—6.5(17A) Forms.** Rescinded IAB 6/26/02, effective 7/31/02.

These rules are intended to implement Iowa Code section 17A.3 and Iowa Code chapter 216B.

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CHAPTER 7  
BUSINESS ENTERPRISES PROGRAM

[Prior to 7/1/87, see Blind, Commission for[160] Ch 4]  
[Prior to 9/21/88, see Blind, Division for the[423] Ch 7]

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

**111—7.1(216D) History and function.** The Randolph-Sheppard Act (Public Law 74-732), first adopted by Congress in 1936, created a business enterprises program to give priority to the needs of blind persons in securing employment and economic opportunities. This legislation was revised in 1954 (Public Law 83-565) and again in 1974 (Public Law 93-516).

The Iowa business enterprises program prepares individuals in the vocational rehabilitation program to become independent operators of food service facilities by providing training in management skills, food service and sanitation laws, and business systems. The business enterprises program establishes facilities and renders ongoing consultation and management assistance to blind operators.

**111—7.2(216D) Definitions.** The following definitions apply to this chapter:

*“Active licensee”* means a licensed vendor who is currently operating a vending facility in this state.

*“Active participation”* means routine consultation with the committee of blind vendors on all matters affecting the business enterprises program. When Congress amended the Randolph-Sheppard Act in 1974 to include a requirement for a committee of blind vendors elected by the vendors themselves in every business enterprises program, congressional intent was to create a routine, ongoing method for the citizens involved in the vending program to participate in the decisions that affected their lives, given a long history of agency decision making that had excluded vendors. While Congress recognized that officials of state agencies are charged with the responsibility of making decisions, Congress wished to create a situation in which these officials routinely consult the persons whom these decisions affect. Thus, “active participation” consists of the manager of the business enterprises program and also the director of the entire agency making a conscious effort to include the committee routinely in policy decisions, in changes of policy, in decisions that will expand or contract the program, in allocation of funding, and in any other matter that will affect individual vendors or the program vendors or the program as a whole.

*“Agreement”* means a written instrument entered into between the department and a vendor authorizing the vendor to operate a vending facility or facilities at a specific location and setting forth the respective responsibilities of the parties.

*“Blind”* refers to the condition of an individual who, after examination by a physician skilled in diseases of the eye or by an optometrist, whichever the individual shall select, has been determined to have: (1) not more than 20/200 central visual acuity in the better eye with correcting lenses or (2) an equally disabling loss of visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends to an angle of no greater than 20 degrees.

*“Blind licensee”* or *“licensee”* means a blind individual licensed by the department pursuant to these rules.

*“Business enterprises program”* means all activities of the department relating to vending facilities on federal, state or other property.

*“Committee”* means the state committee of blind vendors which actively participates in routine, ongoing policy making for the business enterprises program.

*“Federal property”* means any building, land or other real property in this state which is owned, leased or occupied by any department, agency or instrumentality of the United States (including, but not limited to, the Department of Defense, the Department of Veterans Affairs and the United States Postal Service).

*“Federal regulations”* means the rules established for Randolph-Sheppard Act programs by the U.S. Department of Education in 34 CFR 395 (as published in 1977).

*“Food service”* means the goods and services customarily offered by restaurants, cafeterias, snack bars or vending machines for food or beverages.

*“Inactive licensee”* means a licensee who is not currently operating a vending facility in this state.

“*License*” means a written instrument issued by the department to a blind individual authorizing that individual to operate a vending facility on federal, state or other property.

“*Management services*” means supervision, inspection, quality control, consultation, accounting, regulating, in-service training and other related services provided on a systematic basis to support and improve the operation of vending facilities operated by department licensees. “Management services” does not include services or costs which pertain to the ongoing operation of an individual facility after the initial establishment period.

“*Net proceeds*” means the amount remaining from the sale of articles or services of vending facilities, and any vending machine or other income accruing to vendors after deducting the cost of the sale and other expenses.

“*Other property*” means property which is not federal property on which vending facilities are established or operated by the department’s business enterprises program.

“*Permit*” means the official approval given to the department by a department, agency or instrumentality in control of the maintenance, operation and protection of federal or state property, or the person in control of other property whereby the department is authorized to establish a vending facility.

“*Probation*” means a disciplinary action not to exceed one year during which an operator is again attempting to meet program requirements and standards.

“*Provisional*” means a temporary arrangement for a first-time operator pending a permanent assignment to a facility.

“*Public office building*” means the state capitol, county courthouses, city or town halls and all other buildings used primarily for governmental offices of the state, county, city or town. It does not include public schools or buildings at institutions of the state board of regents or the state department of human services. “Public office buildings” are included in the term “other property.”

“*Randolph-Sheppard Act*” means Public Law 74-732, as amended by Public Law 83-565 and Public Law 93-516, 20 U.S.C., Chapter 6A, Section 107.

“*Suspension*” means a temporary cessation of all rights and privileges of a licensed operator pending disciplinary judgment as to whether an operator can or cannot comply with program standards and requirements.

“*Vending facility*” means automatic vending machines, cafeterias, snack bars, cart service, shelters, counters or other appropriate auxiliary equipment operated by vendors licensed by the department which are used for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages or other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with applicable health laws, and includes the vending or exchange of charges for any lottery authorized by state law and conducted by a state agency.

“*Vending machine*” means a coin- or currency-operated machine which dispenses articles or services. This does not include machines operated by the United States Postal Service for the sale of postage stamps or other postal products or services, machines providing services of a recreational nature, or telephones.

“*Vending machine income*” means receipts (other than those of a licensed vendor) from vending machine operations on federal property, after deducting the cost of goods sold (including reasonable service and maintenance costs in accordance with customary business practices of commercial vending concerns) where the machines are operated, serviced or maintained by, or with the approval of, a department, agency or instrumentality of the United States, or commissions paid (other than to a licensed vendor) by a commercial vending concern which operates, services or maintains vending machines on federal property for, or with the approval of, a department, agency or instrumentality of the United States.

“*Vendor*” means a blind individual licensed by the department who is operating a vending facility on federal, state or other property. (See “active licensee.”)

**111—7.3(216D) State committee of blind vendors.** There is established a state committee of blind vendors which will advise and actively participate in routine, ongoing policy decisions made by the department in the management of the business enterprises program. The committee will hold a minimum of three meetings in each calendar year with the agenda for each meeting jointly prepared by the division administrator of the business enterprises program in consultation with the chairperson of the committee.

**7.3(1)** The committee shall:

*a.* Actively participate with the department in decisions and policy and program development decisions affecting the overall administration of the business enterprises program including, but not limited to, changes in longstanding policy, decisions to add or remove locations, decisions regarding terms of permits varying from the standard permits, and all other decisions or changes in decisions that will affect the earning potential or promotional opportunities for vendors in the program or those who join the program;

*b.* Receive and transmit to the department grievances at the request of vendors and serve as an advocate for vendors in connection with these grievances;

*c.* Actively participate with the department in the development and administration of a state system for the transfer or promotion of vendors;

*d.* Actively participate with the department in the development of training and retraining programs for vendors; and

*e.* Sponsor, with the assistance of the department, meetings and instructional conferences for vendors and trainees of the business enterprises program.

**7.3(2)** The committee shall be composed of five vendors who will be elected for two-year terms. One member shall be elected to serve as chairperson. There is no limit to the number of terms an individual may serve.

To the extent possible, the committee membership shall be fully representative of active licensees on the basis of geography and vending facility type, with a goal of providing for proportional representation of vendors on federal property and vendors on other property.

**7.3(3)** The division administrator of the business enterprises program will serve as an ex officio, nonvoting member of the committee.

**7.3(4)** If a member of the committee ceases to be an active licensee or resigns from the committee, a replacement shall be elected for the remainder of the unexpired term at the next statewide meeting of vendors.

**111—7.4(216D) Statewide meeting.** There will be an annual statewide meeting of vendors at a time and place established by the department and the committee. All licensees, trainees and all other interested parties shall attend this meeting; however, only active licensees shall have the right to vote. Failure to attend two consecutive entire meetings without a written excused absence from the administrator of the business enterprises program shall result in placement of active licensees on probation. Failure to attend three consecutive entire meetings without a written excused absence from the administrator of the business enterprises program shall result in termination of the operating agreement (defined in 111—7.12(216D)).

**111—7.5(216D) Election of committee members.** The department will provide for a biennial election of committee members which will take place in even-numbered years during the last calendar quarter.

**7.5(1)** Participation in the election shall be limited to active licensees, and shall not be contingent upon payment of dues or other fees.

**7.5(2)** The election shall be held by secret ballot. Committee members shall take office immediately following the meeting at which they were elected.

**111—7.6(216D) Program selection procedures.** The department has established a clearly defined process through which all applicants for the business enterprises program are screened, trained and placed in facilities. The following procedures will be utilized in assessing applicants for participation in the business enterprises program:

**7.6(1)** The vocational rehabilitation counselor has the primary responsibility for identifying potential applicants for the business enterprises program. In order for an eligible individual to be considered for placement in the business enterprises program, the counselor must make a written recommendation to the division administrator of the business enterprises program.

**7.6(2)** Each applicant must complete a selection pretest administered by the department.

**7.6(3)** The committee may advise the division administrator of the business enterprises program in the selection of trainees and may conduct a personal interview with an applicant.

**7.6(4)** In making a determination concerning acceptance of an applicant into the business enterprises program, the department will adhere to an established rating system which includes the following:

- a. Verification that eligibility guidelines for the program have been met as follows: the individual is legally blind, a U.S. citizen and a resident of the state of Iowa;
- b. A 70 percent minimum score on the recruiting referral sheet submitted by the vocational counselor;
- c. A 70 percent minimum score on the selection pretest; and
- d. A 70 percent minimum score on the personal interview conducted by the department or the committee (if appropriate).

In addition, the department may consider whether there is a reasonable expectation that a vending facility will become available at an appropriate time for the individual or whether there is a reasonable expectation that the individual being considered will be successful.

**7.6(5)** The department will advise the applicant in writing of the acceptance or rejection of the application.

**111—7.7(216D) Preplacement agreement.** Upon acceptance into the business enterprises program, the applicant will execute a preplacement agreement with the department which will include:

1. The placement of the individual in trainee status until successful completion of the training program;
2. The requirement that the individual must successfully complete all components of the training program;
3. The proposed training program for the individual;
4. The assurance that if a vending facility location is available, the trainee will be given equitable participation in the system of transfer or promotion for vendors;
5. A clear understanding of the alternatives if a vending facility location is not available upon completion of the training program or if the individual does not successfully complete the training program; and
6. The procedures for periodic evaluation of the trainee.

**111—7.8(216D) Licensure.** In accordance with federal and state laws and regulations, each participating vending facility operator must be licensed by the department. The license is not transferable and is revocable for cause.

**7.8(1)** The requirements for obtaining a license are:

- a. The applicant must be blind according to the definition in 111—7.2(216D);
- b. The applicant must be a citizen of the United States;
- c. The applicant must be a resident of the state;
- d. The applicant must demonstrate competency which is measured by the ability to operate a vending facility by either successful completion of the training program (if a trainee) or by successful completion of a program competency test with a minimum score of 70 percent (if applying for licensure by reinstatement or reciprocity); and
- e. The applicant must possess a current and valid Iowa department of transportation nondriver identification card.

**7.8(2)** When a trainee successfully completes the training program, a written recommendation for licensure will be made to the director by the division administrator of the business enterprises program. The recommendation will certify that the trainee meets all licensure requirements.

**7.8(3)** The director shall issue an official license to the individual which shall be numbered and shall indicate the date of issuance.

**111—7.9(216D) Licensure by reciprocity or reinstatement.** A vending facility operator formerly licensed in this state may apply to the director for reinstatement of licensure. A vending facility operator licensed or formerly licensed in any other state in accordance with applicable federal regulations may apply to the director for licensure by reciprocity.

**7.9(1)** The individual must sign a release of information for each state where the individual participated in a vocational rehabilitation program.

**7.9(2)** The individual must meet the following criteria for licensure by reciprocity or reinstatement:

- a. Apply and be found eligible for vocational rehabilitation services from the department;
- b. Have no outstanding debts with the business enterprises program or vocational rehabilitation program in any state and no delinquent business taxes or delinquent bills to food service suppliers;
- c. Comply with all licensing requirements of the department.

**111—7.10(216D) System of transfer or promotion for vendors.** In coordination with the state committee of blind vendors, the department has established a state system of transfer or promotion for licensed vendors.

**7.10(1)** When a new vending facility is established or when a vacancy occurs in an existing facility, the department shall first provide the opportunity for transfer or promotion to licensees having priority status. At that time, the department shall give priority status to a vendor who has been displaced from a facility through no fault of the vendor. A vendor shall be considered to have been displaced through no fault of the vendor if the building in which the vendor's facility is located has:

- a. Closed; or
- b. Lost a substantial portion of its population so that the facility no longer meets the financial guidelines of profitability established by the business enterprises program.

**7.10(2)** If the department does not select a vendor with priority status for the transfer or promotional opportunity, all active and inactive licensees and trainees will be notified in writing of the availability of transfer or promotion. The notice will provide the following information concerning the transfer or promotional opportunity:

- a. The location of the available facility;
- b. The operating requirements of the facility;
- c. The potential or actual gross earnings of the facility; and
- d. The deadline for submission of applications.

**7.10(3)** The committee will evaluate the applications on the basis of the following criteria:

- a. Ability to meet the requirements of operating the facility;
- b. Trainee reports or performance evaluation scores obtained during the preceding five years;
- c. Work attitudes, including good customer relations, cooperation with property management, and participation in instructional conferences;
- d. Knowledge and application of sound business practices, including adequate and accurate accounting procedures, maintenance of reasonable productivity standards, cleanliness and sanitation, and reasonable return related to the volume of business; and
- e. Timely filing of specified documents, reports and fees with the department.

When the same score is received by two vendors, the number of years that the vendor has been actively licensed in the Iowa program will be the deciding factor in awarding the transfer or promotion.

**7.10(4)** The final appointment for all transfers and promotions will be made by the director of the department. Before making this decision the director will review the recommendation of the committee and the division administrator. All applicants and the committee will be notified in writing regarding the decision for appointment.

**7.10(5)** A licensee requesting facility priority for assignment through transfer or promotion must first receive a formal recommendation for such from the committee. The request for recommendation from the committee must be submitted in writing within 30 days of facility closure, and the licensee shall appear in person to ask for the recommendation. Priority shall only be considered when the facility is closed through no fault of the licensee.

**7.10(6)** After the recommendation has been received, it will be forwarded to the director, Iowa department for the blind, for written approval or denial within 30 calendar days.

**7.10(7)** If the licensee receives committee and department approval for priority, the program administrator, business enterprises program, shall issue a formal written statement within 30 calendar days to the licensee, advising the licensee of priority status for transfer or promotion.

**7.10(8)** If a licensee is not recommended for priority status, the program administrator shall issue a formal written notice to the licensee within 30 calendar days, indicating why priority status was not granted.

**7.10(9)** In order for a licensee to qualify for priority status, the following criteria must be met: an average score of 90 or above for the past five years on inspection reports and bid evaluation scores, and an average of “meets standards” on performance evaluations.

**7.10(10)** Priority shall only be issued for facilities of comparable type and size to the facility formerly operated by the licensee. Facility types are cafeteria or vending. Comparable size shall be determined by approximately 25 percent of the gross sales at the vacant facility over and above the gross sales of the facility formerly operated by the licensee where priority is requested.

**7.10(11)** Priority status shall be limited to a two-year period, which shall commence at date of issuance. If a licensee is offered an equivalent facility during that period and does not accept assignment, priority status shall be terminated in writing, unless the committee and department determine that there are extenuating circumstances where the licensee cannot accept assignment.

**7.10(12)** If no equivalent facility becomes available during the two-year priority period, the licensee may apply in writing to the committee and department for a one-year extension. If, at the end of the additional year, no equivalent facility is available, the licensee may apply in writing for a second and final one-year extension through the committee and department. The initial two years, plus the two extensions, must be consecutive. All granted extensions shall be in writing from the program administrator, business enterprises program.

**7.10(13)** Actions pursuant to rule 7.10(216D) are subject to appeal procedures of this chapter and the procedures in 111—Chapter 8.

**111—7.11(216D) Placement and performance evaluation.** The staff of the business enterprises program will complete a periodic performance evaluation of each vendor based on criteria developed by the staff and the state committee of blind vendors. Vendors in provisional status will be evaluated every three months and vendors in permanent status will be evaluated annually.

**7.11(1) Placement in provisional status.** When a vendor is appointed for the first time, the vendor will be placed in provisional status. The vendor will be provided with the rating criteria for performance evaluation as a part of the operating agreement (defined in 111—7.12(216D)). A vendor cannot remain in provisional status for longer than two years.

**7.11(2) Placement in permanent status.** When the vendor has received satisfactory ratings on at least two consecutive performance evaluations, the vendor will be placed in permanent status. Failure to achieve permanent status within 12 months shall result in the provisional operator being placed on probation.

**111—7.12(216D) Operating agreement.** Upon appointment of a vendor to a vending facility, the department shall execute an operating agreement with the vendor which shall detail the rights and responsibilities of the vendor and of the department in the operation of the facility.

**111—7.13(216D) Reports.** As specified in the operating agreement, reports must be filed with the administrative office of the department or postmarked by the fifteenth day of each month. The department will accept no more than two consecutive reports which are submitted after the deadline. When an operator exceeds this limit, the department shall impose a fine in the amount of \$100 for each report filed after the deadline. Operators submitting more than two late reports shall be placed on probation and restricted from bidding for transfer or promotion for a period of one year. For a report to be considered complete, it must contain the following documents which relate to the reporting period:

1. A profit and loss statement;
2. A signed bill verification statement;
3. Business-related tax documents; and
4. Canceled checks verifying payment of business-related taxes.

**111—7.14(216D) Vending facility inventory.** The department shall purchase the initial inventory for each vending facility. Upon assignment of a new operator to the facility, the department, the outgoing operator, and the incoming operator shall establish the value of the inventory.

Upon inventory settlement, the operators and the department shall use the following procedure:

1. The department shall pay the operator who is due funds for the inventory difference.
2. The indebted operator who owes money for the inventory shall negotiate a satisfactory payment plan to reimburse the department.

**111—7.15(216D) Maintenance and replacement of equipment.** It is the responsibility of the vendor to maintain all vending facility equipment in good repair and in attractive condition. When equipment becomes obsolete or no longer repairable, it is the responsibility of the department to replace the equipment.

**7.15(1)** During the first 45 calendar days of the vendor's assignment to a location or facility, the department assumes the responsibility for maintenance of equipment. Additionally, in unusual circumstances, the department may negotiate with a vendor to pay particular costs for maintenance of equipment.

**7.15(2)** If, in accordance with the operating agreement, the vendor does not appropriately maintain equipment and this prohibits operation of the facility in a safe, attractive and sanitary manner, the department will assume responsibility for making needed repairs and bill the vendor for the repairs.

**7.15(3)** The department retains title to all equipment purchased by the department.

**111—7.16(216D) Distribution and use of income from vending machines on federal property.** Vending machine income from vending machines located on federal property which has been disbursed to the department by a property management department, agency, or instrumentality under the vending machine income sharing provisions of 34 CFR 395.8 shall accrue to each vendor operating a vending facility on federal property in an amount not to exceed the average net income of the total number of vendors in the state as determined each fiscal year on the basis of each prior year's operation, except that vending machine income shall not accrue to any vendor in any amount exceeding the average net income of the total number of vendors in the United States.

**7.16(1)** No vendor shall receive less vending machine income than that received during the calendar year prior to January 1, 1974, as a direct result of any limitation imposed on such income under this ceiling.

**7.16(2)** No limitation shall be imposed on income from vending machines, combined to create a vending facility, when such a facility is maintained, serviced and operated by a vendor.

**7.16(3)** The department shall retain vending machine income disbursed by a property managing department, agency or instrumentality of the United States in excess of the amounts eligible on a quarterly basis.

**7.16(4)** The department will disburse vending machine income to vendors on a quarterly basis.

**7.16(5)** Vending machine income retained by the department may be used for the establishment and maintenance of retirement or pension plans, for health insurance contributions, for provisions of paid sick leave and vacation time for vendors, or for the maintenance and replacement of equipment. Use of this income shall be approved by a majority vote at an annual statewide vendor meeting.

**111—7.17(216D) Disciplinary action.** The department may impose any or all of the following disciplinary sanctions as appropriate:

**7.17(1) Fines.** Monetary fines shall be imposed by the department for the late filing of required reports or late payment of fees.

**7.17(2) Probation.** The department may place a vendor on probation of the operating agreement for a period not to exceed one year. The probationary period may include an emergency suspension of the operating agreement when appropriate for a period not to exceed 30 days. If the operator is deemed to be on probation after the end of that year, the operating agreement will be terminated.

*a.* Probation may occur when the department determines that any of the following conditions exist:

- (1) The vendor has repeated or continued violations of the terms of the operating agreement;
- (2) The vendor has repeated or continued violations of the vending facility permit;

- (3) The vendor is temporarily ineligible to participate in the business enterprises program;
- (4) The vendor is absent without leave; or
- (5) The health and safety of the public may be jeopardized by the continued operation of the vending facility by the vendor.

*b.* During the period of suspension, the vendor shall relinquish all rights and privileges of the vendor license.

*c.* The department and the vendor shall establish a clearly stated written plan and timetable for correction of the perceived deficiencies after suspension.

**7.17(3) Termination of operating agreement.** When the department determines that a probationary period has been unsuccessful or when the department determines and documents that serious and repeated infractions of the operating agreement or vending facility permit have occurred, the department may terminate an operating agreement.

**7.17(4) License revocation.** The department may revoke a license in the following conditions:

*a.* Improvement of vision so that the operator is no longer eligible for participation in the business enterprises program;

*b.* Written notification from the vendor requesting withdrawal from the business enterprises program;

*c.* Failure to execute an operating agreement by abandoning a facility;

*d.* Determination that the vendor is not competent to manage a vending facility;

*e.* Conviction of any felony; or

*f.* Determination that the vendor possesses a valid driver's license or is driving illegally without a valid driver's license.

**7.17(5) Appeals.** All disciplinary actions may be appealed through the administrative review and fair hearings process. (See 111—Chapter 8, Appeals Process—Business Enterprises Program, Iowa Administrative Code.)

**7.17(6) Procedures.** The department shall notify the vendor by certified mail of a disciplinary action. The notice will include the reasons for the action, the commencement date of the action, and the time period (if appropriate) for the action.

*a.* The department shall also provide notice in the alternative medium of braille, large print or on cassette tape as requested by the vendor. Documents served in alternative medium shall be served within ten working days.

*b.* When immediate action is crucial, the department shall deliver and read a document in person or shall telephone a vendor and read the document over the telephone as an acceptable alternative medium. When this provision is used, the vendor will be notified in writing in the appropriate medium within ten working days.

*c.* To facilitate the successful resolution of situations requiring disciplinary action, the department will offer management assistance and provide information concerning the administrative review and fair hearings process.

**111—7.18(216D) Access to program information.** A vendor will have access to program and financial data relevant to the operation of the business enterprises program. The department will furnish the vendor with a copy of the appropriate vending facility permit and operating agreement and the department's administrative rules. The department will explain these documents to the vendor who will indicate by signed statement that these documents have been furnished and explained.

**111—7.19(216D) Confidentiality.** The department and participants in the business enterprises program are governed by 34 CFR 361.38 (as published January 17, 2001) regarding protection, use, and release of personal information.

**111—7.20(216D) Nondiscrimination.** The department does not discriminate on the basis of sex, race, creed, color, national origin, religion, age or physical or mental disability.

These rules are intended to implement Iowa Code chapter 216D.

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CHAPTER 8  
APPEALS PROCESS—BUSINESS ENTERPRISES PROGRAM

[Prior to 7/1/87, see Blind, Commission for[160] Ch 10]

[Prior to 9/21/88, see Blind, Division for the[423] Ch 8]

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

**111—8.1(216D) Steps in appeals process.** There are four steps in the appeals process of the Iowa department for the blind's business enterprises program:

1. Informal conciliation,
2. Hearing before the commission,
3. Full evidentiary hearing, and
4. Arbitration.

These steps must occur in the order in which they are listed and are more fully described herein, except that step 2 is optional.

**8.1(1) Step 1: Informal conciliation.** This is the necessary first step in the process to resolve any grievance. Either the vendor or the staff can commence informal conciliation. Informal conciliation must occur before any other steps in the grievance process can be used.

Informal conciliation occurs all the time and is not usually given a name by the participants, but is sometimes called administrative review. It can, but does not necessarily, involve a personal meeting between the vendor and the staff. Informal conciliation occurs when either the vendor or the staff is dissatisfied with the action of the other and contacts the other to try to work out the dissatisfaction. This contact can be by phone, by letter, or in person and usually involves discussion and negotiation of the point over a period of time. Both the vendor and staff have an interest in working out grievances informally since this is the least costly, least time-consuming, and least disruptive way of resolving differences. However, both the vendor and the staff have the right to adhere to their opinion and to move to the next step in the grievance process if informal conciliation does not resolve the grievance in a manner satisfactory to them. If either the vendor or the staff remains dissatisfied after a good-faith effort by both to resolve the grievance, then either the vendor or staff can move to the next allowable step.

**8.1(2) Step 2: Hearing before the commission.** This step is only available to the vendor. The staff cannot initiate a hearing before its own policy-making entity. This step is simply an option for the vendor. The vendor may choose to skip this step completely and move directly from step 1 to step 3. If the vendor chooses to skip step 2, the vendor has used all administrative remedies available to the vendor, including the option to skip a remedy.

*a.* The commission makes its own rules concerning procedure case-by-case at the hearing itself. If either the vendor or the staff is unsure about the procedure, the commission members should be asked to explain the procedure before the hearing starts. These hearings are generally informal, conducted by the commission so that both sides have an opportunity to present to the commission whatever the commission believes is relevant to the decision it is being asked to make.

*b.* It is possible that, under certain circumstances, a hearing before the commission would be a closed hearing. Unless all the proper circumstances exist to close the hearing, the hearing must be held as a part of an open, publicized meeting of the commission and listed on its agenda. One set of circumstances which could close such a hearing will arise when the vendor is seeking, as a part of the commission's decision, that the commission "evaluate the professional competency" of a department staff member concerning that staff member's "appointment, hiring performance, or discharge" and when that staff member asks the commission to go into closed session as provided in the Iowa open meetings law, Iowa Code chapter 21.

*c.* Another set of circumstances which could close the commission hearing may arise if the vendor or the staff wishes to raise during the hearing matters which are considered confidential. The documents which are confidential are likely to be very limited and the decision to close the hearing or to leave it open will have to be made on a case-by-case basis.

*d.* The Iowa open meetings law, Iowa Code chapter 21, insists that only those meetings or parts of meetings specifically exempted by a precise section of the law may be legally closed; therefore, if an exemption is not specifically met, the meeting of the commission under this subrule shall be open.

e. A vendor who has used this step in the appeals process and is dissatisfied with the result then moves to step 3.

**8.1(3) Step 3: Full evidentiary hearing.** Either a vendor or the staff can commence the full evidentiary hearing process, which is a required step in the appeals process. A full evidentiary hearing is part of the appeals process guaranteed to the vendor by the federal Randolph-Sheppard Act.

a. The full evidentiary hearing process is governed by rule 111—8.2(216D).

b. If the vendor is dissatisfied with the decision after a full evidentiary hearing, then the vendor may move to step 4.

**8.1(4) Step 4: Arbitration.** A vendor can commence arbitration if dissatisfied with the ruling after a full evidentiary hearing. Arbitration is a required step in the appeals process. Arbitration is a part of the appeals process guaranteed to the vendor by the federal Randolph-Sheppard Act. Essentially, arbitration occurs by the vendor's filing a complaint with the United States Secretary of Education, who then convenes a three-member arbitration panel. The vendor chooses one member of the three-member arbitration panel, the department chooses the second member, and those two persons choose a third person agreeable to both who serves as chair of the arbitration panel.

At the full evidentiary hearing and the arbitration stages of the appeals process, proceedings shall be conducted much like proceedings in a court of law. Both these proceedings are open to the public. The department is normally represented at both by an assistant attorney general. The vendor may be represented by an attorney or by a knowledgeable friend at the commission hearing, the full evidentiary hearing, and the arbitration hearing. The court-reported record of testimony and the documents admitted into evidence at the arbitration step shall serve as the complete record of proceedings for any further appeals. No more evidence can be added if the vendor or the department appeals the arbitration panel's decision into the federal courts. Appeal from the arbitration decision goes to the federal district court and can go as far as the supreme court of the United States.

[ARC 0461C, IAB 11/28/12, effective 1/2/13]

**111—8.2(216D) Full evidentiary hearings.** These rules define procedures under which full evidentiary hearings, required by the Randolph-Sheppard Act, shall be conducted in Iowa.

**8.2(1) Definitions:**

“Day” means a regular working day for employees of the state of Iowa.

“Full evidentiary hearing” means the proceeding defined by the Randolph-Sheppard Act, 20 U.S.C. 107D-1(a) and 34 CFR 395.13, July 1, 1981.

“Petitioner” means the person or agency which files the petition commencing the full evidentiary hearing proceeding.

“Respondent” means the person or agency named by the petitioner as a person or agency against which the petition is brought and from whom the petitioner seeks stated responses.

**8.2(2) Commencement of proceeding.**

a. *How commenced.* A full evidentiary hearing proceeding may be commenced by the department or by a vendor. A full evidentiary hearing proceeding is commenced by filing a petition with the director and serving the petition on the respondent in the manner described in these rules.

b. *Commencement by department.* If the department believes that a vendor has violated the terms of the operator's agreement then in effect between the department and the vendor, or believes the vendor has violated the rules governing the business enterprises program in Iowa so as to warrant suspension or revocation of a vendor's operating agreement or license, the department shall file a petition naming the vendor as respondent. However, in cases of imminent threat to the health or safety of vending facility patrons or concern for retention of the permit to operate a facility as governed by 111—subrule 7.5(2), the department may remove a vendor as provided in that subrule but at the same time must initiate the evidentiary hearing procedures contained in this subrule.

c. *Commencement by vendor.* If a vendor believes that the department has violated a right guaranteed to the vendor by the Randolph-Sheppard Act or Iowa law, or if the vendor is otherwise aggrieved by the action of the department, the vendor may file a written petition naming the department as respondent within 15 days after an adverse decision from an administrative review or within 15 working days of the occurrence in the absence of an administrative review.

*d. Hearing officer involved.* When the director has received a petition and a response has been filed with the director under these rules, the director shall provide these documents to an impartial hearing officer selected according to law and shall thereafter act only as the employee of one of the parties. After the director has referred the documents as provided in this subrule, then the director shall serve notice upon all parties of the identity, telephone number, and address of the hearing officer in the manner prescribed in these rules.

**8.2(3) The petition.**

- a. Contents of the petition.* The petition shall be a clear, concise written statement which shall:
1. Identify the petitioner;
  2. Identify the petitioner's representative;
  3. Identify the respondent;
  4. Give a general statement of the facts the petitioner believes constitute a violation of respondent's duty to petitioner or a violation of petitioner's rights or a grievance on petitioner's behalf;
  5. In the case of the department, give the specific portion or portions of the operator's agreement or license or rules believed to have been violated;
  6. In the case of a vendor, give a statement of the provisions of law on which the vendor bases a claim or violation of a right or other grievance; and
  7. Give a general statement of the relief sought and the basis for such relief.
- b. Serving of petition.* The petitioner shall serve the petition upon the director and upon the respondent in the manner described in these rules. If the petitioner is the department, the filing of the petition with the director and serving of the petition upon respondent shall be sufficient to commence the proceeding.

**8.2(4) The response.**

- a. Contents of the response.* The response shall be a clear, concise statement which shall:
1. Identify the respondent;
  2. Identify the respondent's representative;
  3. Identify the petitioner;
  4. Give a general statement of the facts the respondent believes constitute a legal and complete explanation for respondent's behavior;
  5. In the case of the department, give specific citations to federal or Iowa law upon which it relies to explain its actions;
  6. In the case of a vendor, give a statement of the provisions of law upon which the explanation is based;
  7. Give a general statement of the appropriate conclusion of the proceeding from the respondent's point of view;
  8. Concede as true those facts stated by the petitioner and not disputed by the respondent;
  9. Concede the applicability and the correctness of the application of any law or regulation cited by the petitioner and not disputed by the respondent; and
  10. Concede the appropriateness of any relief sought by the petitioner which the respondent agrees is appropriate.
- b. Serving of response.* Within ten days of the service of a petition prepared under subrule 8.2(3), the respondent shall file a response with the director. The response shall be served upon the director and on the petitioner in the manner described in these rules. If the respondent is the department, the filing of the response with the director is sufficient service upon the department.
- c. Failure to respond.* If the director receives a petition which is properly served in the manner described in these rules and to which no response is filed within ten days, then the director shall refer the petition to the hearing officer as described in subrule 8.2(2), paragraph "d." A party failing to file a response shall be taken by the hearing officer as having conceded each and every fact and application of law alleged in the petition concerning the respondent unless able to show good cause for failing to file within ten days. The hearing officer shall direct in such cases that a response be filed as soon after the ten-day period as the hearing officer deems reasonable.

**8.2(5) Discovery.**

*a. Petitioner's discovery, generally.* Upon the filing and service of a petition, the petitioner becomes entitled to discovery.

*b. Respondent's discovery, generally.* Upon the filing and service of a response, a respondent becomes entitled to discovery.

*c. Voluntary discovery encouraged.* All parties are entitled to take court-reported depositions from persons they believe have relevant evidence, except that a vendor who is a respondent may not be compelled to give a deposition. All parties are entitled to request voluntary production of documents and things in the possession of another party.

*d. Department's duty to disclose.* Upon request, the department must produce for a vendor's inspection and copy any documents and things requested by the vendor and must produce for deposition any commission member or employee requested by the vendor.

*e. Discovery by subpoena.* If any party seeks relevant evidence not under the control of the department and cannot obtain the evidence by voluntary compliance, the hearing officer is empowered to use the subpoena power of the department to subpoena witnesses for depositions and to subpoena the production of documents and things for inspection by all parties.

*f. Notice of discovery events.* All parties shall be given notice in the manner described in these rules of all depositions to be taken and of all productions of documents and things, whether performed voluntarily or pursuant to a subpoena.

*g. Hearing officer to supervise.* The hearing officer shall supervise discovery and shall ensure:

1. That each side has the opportunity to find and examine all evidence it deems relevant;
2. That all parties conduct discovery as quickly as possible so there is no unnecessary delay of the proceedings to the harm of any party; and

3. That no party or citizen is unnecessarily burdened with repetitive cumulative or harassing requests for discovery except that the department shall be held strictly to its duty to produce as defined in subrule 8.2(5), paragraph "d."

*h. Sanctions.* If the hearing officer determines that any party is refusing to cooperate in discovery, is hiding evidence, or is unnecessarily delaying or dawdling in discovery to the harm of any other party, then the hearing officer shall grant some or all of the relief sought by the harmed party.

**8.2(6) Hearing date and scheduling conferences.**

*a. Setting of hearing date.* As soon after the filing and service of the response as can be arranged, the hearing officer shall hold a conference between the parties to set a date for the hearing. All parties shall provide to the hearing officer their best estimate of how long their discovery will take and shall provide suggested hearing dates. The hearing officer shall then set a date for the hearing, taking into consideration the estimates of each party concerning discovery, the convenience of witnesses and counsel, and the need to conduct the proceedings expeditiously. Testimony shall be taken evenings or weekends if blind persons who are employed are to be called as witnesses. The hearing officer shall write an order scheduling the date for the hearing within 15 working days of receipt of a response unless the vendor and the department agree in writing to some other period of time.

*b. Rescheduling of hearing date.* If any party finds that discovery is taking longer than estimated despite the party's efforts or for any other good cause, the hearing officer may reschedule the hearing for a later date by means of a second conference at which the party seeking rescheduling shall state its reasons and any other party has the opportunity to object. After hearing all relevant statements from the parties, the hearing officer shall reschedule the date or not reschedule the date as required by equity, the provisions of subrule 8.2(5), paragraph "g," giving the hearing officer supervisory authority over discovery, and the provisions of subrule 8.2(6) governing the setting of hearing dates.

*c. Methods of holding conferences.* Conferences held under this rule may be held in person or by telephone or by a combination of both, according to the convenience of the hearing officer and the parties.

*d. Notice.* Notice of these conferences shall be served upon all parties in the manner described in these rules.

**8.2(7) Prehearing conference.**

*a. Scheduling the conference.* The hearing officer shall schedule a prehearing conference so that all parties or representatives may be present. Normally it will be held 20 days before the date set for the

hearing, but the date of this conference may be more than 20 days before the date set for the hearing if all parties agree, if the date would otherwise fall on a weekend, or if the hearing officer's schedule requires it. In no case shall the prehearing conference be nearer to the date set for the hearing than five days. The hearing officer shall serve notice of the prehearing conference at least ten days prior to the date set for the conference in the manner described in these rules. If any party objects to the time set for the conference, the party shall immediately notify the hearing officer and the hearing officer shall conduct an immediate conference with all parties as soon as possible so the prehearing conference can go forward. Aside from the provisions of this paragraph, the hearing officer shall only change the prehearing conference to accomplish the provisions of subrule 8.2(7), paragraph "b."

*b. Conference in person.* To the greatest extent possible, the hearing officer shall schedule the prehearing conference so that all parties may be present in person or through their representatives being present in person.

*c. Facts and law.* During the prehearing conference, the hearing officer shall determine the facts on which all parties agree, the facts on which any parties disagree, the applications of law about which all parties agree, and the areas of applications of law about which the parties disagree.

*d. Witnesses exchanged.* During the prehearing conference, each party shall provide the hearing officer and the other parties with a list of the witnesses the party intends to call at the hearing. If any party does not recognize a witness or the purpose for which the witness is being called, the hearing officer shall require the party intending to call the witness to describe briefly the witness including the witness' relation to any party and shall require a brief summary of the testimony the witness is expected to provide.

*e. Documents exchanged.* During the prehearing conference, each party shall provide the hearing officer and all other parties a copy of every document the party intends to introduce into evidence and a copy of every document the party might introduce during its case or during rebuttal. The hearing officer may designate those documents intended to be introduced at this time if that is desired. Upon the request of any party, the party offering a document shall be required to identify the person or persons who prepared a document and the source of information presented in a document.

*f. Objections to evidence.* During the prehearing conference, the hearing officer shall hear and determine all objections to the admission of evidence which can be fully and fairly made at this time so that time at the hearing can be used for the taking of admissible evidence.

*g. Settlement.* During the prehearing conference, the hearing officer shall encourage the reaching of a settlement agreement which is fair and equitable to all parties.

*h. Completing discovery.* During the prehearing conference, the hearing officer shall settle all unresolved matters of discovery.

*i. Final discovery schedule.* At the end of the prehearing conference, the hearing officer and all parties shall jointly make a schedule for completing any discovery to ensure that the hearing shall proceed on schedule.

*j. Prehearing order.* Within one week of the prehearing conference, the hearing officer shall prepare and serve upon all parties in the manner described in these rules a prehearing order which shall:

1. List the participants in the conference and whether they were present in person or by telephone;
2. State the relevant facts and applications of law not in dispute;
3. State the facts and applications of law which constitute the dispute;
4. Attach the list of witnesses of each party;
5. List the exhibits intended to be introduced by each party, giving designations if already assigned;
6. Attach the schedule for completing discovery;
7. Set forth any rulings on the admissibility of evidence together with the reason why the ruling is made.

**8.2(8) The hearing.**

*a. Order of presentation.* The order of presentation at the hearing shall be as follows:

1. Opening statement by petitioner;
2. Opening statement by respondent;
3. Witnesses and exhibits from petitioner;
4. Witnesses and exhibits from respondent;

5. Rebuttal witnesses and exhibits from petitioner;
6. Rebuttal witnesses and exhibits from respondent;
7. Closing statement by petitioner;
8. Closing statement by respondent; and
9. Rebuttal statement by petitioner.

*b. Evidence.* During the hearing, the hearing officer shall receive all oral and documentary evidence from witnesses, documents and things which are relevant to the issues in dispute. The hearing officer may exclude totally irrelevant evidence or evidence which is repetitive and shall admit the kind of evidence upon which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, even if it would be inadmissible in a jury trial. During the presentation of evidence by one party, the other party and the hearing officer may cross-examine witnesses. Objections to evidence that it is totally irrelevant or repetitive must be made and ruled upon, where possible, at the prehearing conference. If the hearing officer excludes evidence in the prehearing order, the party offering the evidence may offer the excluded evidence again at the hearing if other evidence makes the excluded evidence relevant to the party's case or rebuttal.

*c. Subpoenas.* The hearing officer is empowered to use the subpoena power of the department to compel the attendance of witnesses and the production of documents on behalf of any party which seeks a subpoena and shows that the evidence cannot otherwise be presented.

*d. Reporting or recording.* The hearing shall be reported by a certified shorthand reporter or, by agreement of all parties, the hearing may be tape recorded. If the hearing is reported, the department shall pay for the reporter. If the hearing is recorded, any party may transcribe the hearing at the party's own expense. The transcript of testimony, exhibits, and all papers and documents filed in the hearing shall constitute the exclusive record for decision.

*e. Offering of new evidence and recesses for reading it.* If any party seeks to introduce a document into evidence which was not exchanged with other parties at the prehearing conference as required in subrule 8.2(7), paragraph "e," the hearing officer shall hear objections to the admission of the document on the grounds it was not so exchanged. The document shall be admitted only if the party offering the document can show that the party did not know of the existence of the document before the prehearing conference or had some other good reason why the document was not exchanged as required. If a document is offered into evidence, any blind hearing officer, blind representative, or blind vendor may automatically have a recess of the hearing for a reasonable time to study the document.

*f. Burden of proof.* The burden of proof shall rest upon the petitioner at all times, and the decision of the hearing officer shall be rendered according to the preponderance of the evidence.

*g. Briefs.* Within ten days after the hearing, the petitioner may file with the hearing officer a brief which shall be served upon all other parties in the manner prescribed in these rules and which shall summarize the facts and state the applicable law. Within five days after the filing of a petitioner's brief, the respondent may file a reply brief summarizing the facts and stating the law which shall be served upon all parties in the manner described in these rules. Within five days of filing a reply brief, the petitioner may file a rebuttal brief, which shall be served on all parties. If any party chooses not to file a brief, the parties following it in order may still file briefs. Any party may waive the filing of briefs.

**8.2(9) Decision on the record.**

*a. Written decision.* Within 15 working days after receipt of the official transcript, the hearing officer shall render a decision. The decision shall be written and shall be served upon all parties in the manner described in these rules.

*b. Finality of decision.* The decision of the hearing officer shall be final unless a party appeals the decision as provided in subrule 8.2(10).

*c. Contents of decision.* The hearing officer's decision shall clearly state the facts found by the hearing officer, the law found by the hearing officer to be applicable, the hearing officer's specific applications of the law to the dispute presented at the hearing, and the relief to be granted, if any, which the hearing officer finds to be fair, equitable, and according to law.

*d. Reader services or other communication services.* Reader services or other communication services will be arranged for a vendor requesting them. Transportation costs and per diem shall be provided

to the vendor if the evidentiary hearing is in a city other than the legal residence of the vendor. The hearing will be held at a time and place convenient and accessible to the vendor.

**8.2(10) Appeal.** A vendor dissatisfied with the decision rendered after a full evidentiary hearing may request that an arbitration panel be convened by filing a complaint with the United States Secretary of Education, as described in 20 U.S.C. 107D-1(a) and 34 CFR 395.13, effective July 1, 1981, and serving upon all other parties the letter demanding arbitration.

**8.2(11) Settlement.** The hearing officer shall at all times encourage settlement by the parties before the hearing. The hearing officer shall be satisfied that any settlement decree proposed by the parties is fair and equitable to all parties and, if so, shall sign the decree along with all the parties and shall retain jurisdiction over the parties for a reasonable period, to be provided for in the decree, to ensure that the decree is implemented.

**8.2(12) Hearing officer.**

*a. Generally.* The hearing officer shall conduct all proceedings to ensure every party an opportunity to make its case and to avoid unnecessary delay. The hearing officer shall be an impartial, qualified official who has no involvement either with the action at issue or with the administration or operation of the vending program. The hearing officer shall be a qualified state agency hearing officer and shall in no case be a staff member of the department.

*b. Interim orders.* The hearing officer shall have the power to make all interim orders deemed necessary for the orderly and fair progression of the proceeding. Where appropriate, the hearing officer may make orders determining the interim relation of the parties in the proceeding.

*c. Sanctions.* The hearing officer shall have the power to supervise the proceeding generally and to fashion those orders for punishment of dawdling or misbehavior of any party which fairness requires. These orders may include the granting of some or all of the relief sought by the party who was harmed by the dawdling or misbehavior of a party.

*d. Ex parte communication prohibited.* The hearing officer shall not communicate directly or indirectly about any issue of fact or law in the hearing with any party except with notice and opportunity for all parties to participate as provided in these rules.

**8.2(13) Representatives.**

*a. Representatives designated.* Upon the filing of a petition or response, every party shall designate the person, if any, who will serve as the party's representative, giving work and home telephone numbers and work address of the representative. Vendors may choose to represent themselves and shall, if they choose to do so, indicate that choice on the petition or response. The department may choose to have one of its employees serve as representative and, if it elects to do so, shall so indicate on the petition or response. Any party may choose to be represented by an attorney. Any party may choose to be represented by a friend, advocate, or representative not licensed to practice law.

*b. Change of representative.* If, at any time, for any reason, the designation of representative of a party changes, that party shall immediately serve notice in the manner described in these rules upon the hearing officer and all other parties, identifying the new representative and giving the information required to be provided by subrule 8.2(13), paragraph "a."

*c. Duties of representatives.* The representative designated by a party shall appear with the party at all points in the proceeding. The party may be represented at any point in the proceeding by the representative alone. The representative shall have the power to act for and to bind the party represented, after consultation with that party.

**8.2(14) Notice and service.**

*a. Form of notice.* Every petition, response, notice, order, decision, and other document required to be served under these rules shall be served on every party in standard print. In addition to the standard print document, a blind vendor, blind representative, or blind hearing officer shall also receive service in braille, tape, or large print at the choice of the vendor, representative, or hearing officer. The department shall maintain a list of choice of alternative medium of each vendor. Documents served in the alternative medium shall be served in a timely manner.

*b. Basic documents.* The petition or response, the prehearing order, and the hearing officer's decision shall be served upon the blind vendor, blind representative, or blind hearing officer in the medium of that person's choice in addition to service in standard print. This requirement cannot be waived.

*c. Hearing officer serving notices, orders.* In addition to sending scheduling notices to a blind vendor or blind representative in standard print, the hearing officer may telephone the blind person and read the notice over the telephone as the alternative medium for the blind person. If the hearing officer elects this method, the hearing officer shall keep a log showing the time and date of the call. If the hearing officer chooses this method, no discussion of the proceeding shall occur during the call except that the receiver may register objections to scheduling. The prehearing order and the decision will be produced by the department and in a timely manner unless the hearing officer chooses to tape or braille these documents personally.

*d. Waiver.* The blind vendor, blind representative, or blind hearing officer may waive service of all documents, except basic documents, in an alternative medium by filing a waiver with the hearing officer and serving the waiver on all parties.

*e. Service methods.* Service of documents can be made in one of three ways: By a sheriff or deputy who prepares for the serving party a return of service; by certified mail, return receipt requested, with a delivery restricted to the party to be served; or by a person not employed by or related to any party who is over 18 years of age and who hands the document to the party to be served and makes a return of service for the serving party.

*f. Service recorded.* Every document served under these rules will be accompanied by a statement of how the document is being served, signed by the party doing the serving. Proofs of service will be maintained by the serving party.

*g. Serving the department.* The department may be served during regular business hours at its Des Moines office through acceptance of the document by the director, a deputy director, or administrative assistant to the director, any one of whom may sign the return receipt.

*h. Serving the vendor.* The vendor may be served at home or at work, but only the vendor or the vendor's spouse can accept service. If the vendor designates a representative, the representative shall accept service on behalf of the vendor from the time the representative begins to act on the vendor's behalf. The representative may be served in the same manner the department is served. The fact that a representative is accepting service for the vendor does not remove the requirement for service to be in the alternative medium as defined in this rule.

*i. Disputes.* If a dispute arises concerning the receipt of service, the hearing officer shall examine the documents showing service by the serving party, the intended recipient, and any other relevant evidence. Genuine disputes shall be resolved in favor of the person who states that a document was not received except that a document's being served and then lost at the department shall not constitute failure of service. If the hearing officer finds that a document was not received, the schedule of proceedings shall be adjusted accordingly. If a party misses a deposition, production, or conference due to lack of service, the hearing officer shall fashion an appropriate remedy.

*j. Sanctions.* If the hearing officer determines that a party deliberately or negligently failed to serve another party who was harmed by the lack of service, the hearing officer shall fashion appropriate sanctions which may include granting some or all of the harmed party's relief.

**8.2(15)** *Referring to these rules.*

*a. Official citation.* These rules shall be published in the Iowa Administrative Code with each rule preceded by the agency number and followed by the appropriate Iowa Code section or Acts designation in parentheses.

*b. Ordinary citation.* During the course of a hearing proceeding in all oral and written statements, these rules may be referred to by simple designation, omitting the Iowa Code reference. For example, this paragraph may be referred to as subrule 8.2(15), paragraph "b."

*c. Availability.* To facilitate the availability and use of these rules, each vendor shall be provided with a copy in a designated medium and the library for the blind and physically handicapped shall have copies in all three media available for borrowing. These shall give the Iowa Administrative Code citation at the

beginning and shall thereafter use the ordinary designation method described in subrule 8.2(15), paragraph “b.”

These rules are intended to implement Iowa Code chapter 216D.

[Filed 9/20/85, Notice 5/8/85—published 10/9/85, effective 12/18/85]

[Filed 6/9/87, Notice 3/25/87—published 7/1/87, effective 8/5/87]

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[Filed 6/27/97, Notice 5/7/97—published 7/16/97, effective 8/20/97]

[Filed ARC 0461C (Notice ARC 0181C, IAB 6/27/12), IAB 11/28/12, effective 1/2/13]



CHAPTER 9  
ADULT ORIENTATION AND ADJUSTMENT CENTER

[Prior to 7/1/87, see Blind, Commission for[160] rule 2.6]

[Prior to 9/21/88, see Blind, Division for the[423] Ch 9]

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

**111—9.1(216B) Function.** The adult orientation and adjustment center is a residential rehabilitation program which provides intensive instruction in alternative techniques of blindness and in development of positive attitudes about blindness. The adult orientation and adjustment center also carries out public relations and educational programs in an effort to gain public awareness and recognition of the ability of blind persons to be in the mainstream of society.

**111—9.2(216B) Eligibility.**

**9.2(1)** Enrollment in the adult orientation and adjustment center shall be limited to persons 17 years of age or older.

**9.2(2)** Clients of vocational rehabilitation services or independent living rehabilitation services shall be eligible for admission to the adult orientation and adjustment center as specified in their individual plan for employment.

**9.2(3)** Persons who remain in the caseloads of vocational rehabilitation or independent living programs in other states shall not be accepted as students in the adult orientation and adjustment center, unless a formal written request from the out-of-state agency is received and approved by the commission. Clients of out-of-state agencies will be enrolled only when doing so would not deny training to an otherwise eligible client of the department.

[ARC 0461C, IAB 11/28/12, effective 1/2/13]

**111—9.3(216B) General program policies.** Student use of dog guides will not be allowed during program activities of the adult orientation and adjustment center. However, users of dog guides shall otherwise have access to all department facilities, subject to applicable state or federal laws and regulations.

These rules are intended to implement Iowa Code chapter 216B.

[Filed 9/17/79, Notice 6/13/79—published 10/3/79, effective 11/7/79]

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CHAPTER 10  
VOCATIONAL REHABILITATION SERVICES

[Prior to 7/1/87, see Blind, Commission for[160] Ch 2 and rule 3.3]

[Prior to 9/21/88, see Blind, Division for the[423] Ch 10]

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

**111—10.1(216B) Function.** Vocational rehabilitation services assist eligible individuals to achieve an employment outcome consistent with their individual strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

**111—10.2(216B) State plan.** The state plan for vocational rehabilitation of the blind of Iowa is developed by the department pursuant to federal regulations and submitted to the United States Department of Education, rehabilitation services administration. The state plan delineates the scope of vocational rehabilitation services to individuals and to groups, ensures that written policies are maintained, and provides guidelines for expenditure of funds.

In accordance with 34 CFR 361.29 (as published in the Federal Register on January 22, 2001), reports of statewide studies and evaluations are available to the public for review.

[ARC 0461C, IAB 11/28/12, effective 1/2/13]

**111—10.3(216B) Application procedures.** Persons desiring vocational rehabilitation services should contact the department and must complete the application process. An individual is considered to have submitted an application when the individual or the individual's representative, as appropriate, (1) has completed and signed an agency application form; (2) has provided information necessary to initiate an assessment to determine eligibility and priority of services; and (3) is available to complete the assessment process.

**111—10.4(216B) Eligibility.**

**10.4(1)** Eligibility for vocational rehabilitation shall be determined upon the presence of four basic conditions: (1) the existence of blindness as defined in rule 111—1.4(216B); (2) the existence of blindness constitutes or results in a substantial impediment to employment; (3) the individual intends to achieve an employment outcome consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice; and (4) the applicant requires vocational rehabilitation services to prepare for, secure, retain, or regain employment.

Applicants who meet the eligibility requirements stated in the paragraph above will be presumed to be able to benefit from vocational rehabilitation services in terms of an employment outcome, unless the department can prove with clear and convincing evidence that the applicant is incapable of benefitting in terms of an employment outcome from vocational rehabilitation services due to the severity of the applicant's disability.

Any applicant who has been determined eligible for social security benefits under Title II or Title XVI of the Social Security Act is (1) presumed eligible for vocational rehabilitation services, and (2) considered an individual with a significant disability.

No duration of residence requirement is imposed that excludes from services any applicant who is present in the state. No applicant or group of applicants is excluded or found ineligible solely on the basis of the type of disability. The eligibility requirements are applied without regard to the age, gender, race, color, creed, or national origin of the applicant; type of expected employment outcome; source of referral; or the particular service needs or anticipated cost of services required by an applicant or the income level of an applicant or applicant's family.

Nothing in this rule is to be construed to create an entitlement to any vocational rehabilitation service.

**10.4(2)** Whenever changed circumstances, such as a decrease in fiscal or personnel resources or an increase in its program costs, indicate that the department may no longer be able to provide a full range of services, as appropriate, to all eligible applicants, the department will invoke an order of selection policy based upon 34 CFR 361.36 (as published in the Federal Register on January 22, 2001).

[ARC 0461C, IAB 11/28/12, effective 1/2/13]

**111—10.5(216B) Services.**

**10.5(1)** Vocational rehabilitation services are any services described in an individualized plan for employment necessary to assist an individual in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual.

Services may include the following: assessment for determining eligibility and priority for services; assessment for determining vocational rehabilitation needs; vocational rehabilitation counseling and guidance; referral and other services necessary to secure needed services from other agencies and to advise individuals about the client assistance program; physical and mental restoration; vocational and other training services, including personal and vocational adjustment training; maintenance; transportation; vocational rehabilitation services to family members; interpreter services for individuals who are deaf-blind; reader services; rehabilitation teaching services; orientation and mobility services; job-related services, including job search and placement assistance, job retention services, follow-up services and follow-along services; supported employment services; personal assistance services; postemployment services; occupational licenses, tools, equipment, initial stocks and supplies; rehabilitation technology; transition services; technical assistance and other consultation services to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome; and provision of other goods and services determined necessary to achieve an employment outcome.

**10.5(2)** Services for groups of individuals who are blind. The department may also provide for the following vocational rehabilitation services for the benefit of groups of individuals who are blind: (1) The establishment, development or improvement of a public or other nonprofit community rehabilitation program that is used to provide vocational rehabilitation services that promote integration and competitive employment including, under special circumstances, the construction of a facility. (2) Telecommunication systems that have the potential for substantially improving vocational rehabilitation service delivery methods and developing appropriate programming to meet the particular needs of individuals who are blind, including telephone, television, video description services, satellite, tactile-vibratory devices, and similar systems, as appropriate. (3) Special services to provide nonvisual access to information for individuals who are blind, including the use of telecommunications, braille, sound recordings, or other appropriate media; tactile materials for individuals who are deaf-blind; and other special services that provide information through tactile, vibratory, auditory, and visual media. (4) Technical assistance and support services to businesses that are not subject to Title I of the Americans with Disabilities Act of 1990 and that are seeking to employ individuals who disabilities. (5) In the case of any small business enterprise operated by individuals with significant disabilities under the supervision of the department, including enterprises established under the Randolph-Sheppard program, management services and supervision provided by the department along with the acquisition by the department of vending facilities or other equipment, initial stocks and supplies, and initial operating expenses. (6) Other services that promise to contribute substantially to the rehabilitation of a group of individuals but that are not related directly to the individualized plan for employment of any one individual. (7) Consultative and technical assistance services to assist educational agencies in planning for the transition of students with disabilities from school to postschool activities, including employment.

**10.5(3)** Joint planning between an eligible individual and staff will be employed in the development of the individual plan for employment in order to determine which specific services may be needed and to ensure that the individual has the opportunity to make an informed choice regarding employment goals and objectives. The following factors may be taken into account in arriving at a decision as to what services will be provided: the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

**111—10.6(216B) Consideration of comparable services and benefits.**

**10.6(1)** Prior to providing any vocational rehabilitation services, except those services listed in subrule 10.6(3), to an eligible individual or to members of the individual's family, the department must determine whether comparable services and benefits exist under any other program and if those services and benefits are available to the individual. Full consideration is given to any comparable service or benefit

available to an eligible blind person under any program, except for grants or awards from organizations of the blind.

**10.6(2)** To the extent that an individual is eligible for comparable services or benefits, they are utilized insofar as they are adequate and do not interrupt or delay: (1) the progress of the individual toward achieving the employment outcome identified in the individualized plan for employment or an immediate job placement; or (2) the provision of vocational rehabilitation services to any individual who is determined to be at extreme medical risk.

**10.6(3)** The following services are exempt from a consideration of comparable services and benefits under subrule 10.6(1) above: (1) assessment for determining eligibility and vocational rehabilitation needs; (2) counseling and guidance; (3) referral services to other agencies; (4) job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services; (5) rehabilitation technology services; (6) postemployment services; and (7) training in the adult orientation and adjustment center.

**10.6(4)** The consideration of comparable services and benefits under any program does not apply if such a consideration would delay the provision of vocational rehabilitation services to any individual who is determined to be at extreme medical risk as defined by rule 111—1.4(216B), based on medical evidence provided by an appropriate qualified medical professional; or an immediate job placement would be lost due to a delay in the provision of comparable services and benefits.

**10.6(5)** In the event that severe revenue shortages make budget reductions necessary, the department may invoke a limitation on payment of tuition each semester to a rate no greater than the maximum tuition rate effective at institutions operated by the Iowa board of regents for each semester of the individual's enrollment. When it is necessary to invoke this limitation with general notice to the public and to individuals potentially affected, exceptions may be made in cases in which a reasonable necessity for a waiver can be demonstrated, the individual's counselor recommends a waiver, and the program administrator approves the waiver before the individual's enrollment. In no case, however, shall this rule be construed as discouragement of an individual's attending private or out-of-state institutions when utilization of other available funds makes it possible to do so.

[ARC 0461C, IAB 11/28/12, effective 1/2/13]

#### **111—10.7(216B) Termination of services.**

**10.7(1)** A decision to terminate vocational rehabilitation services shall be made only after providing an opportunity for full consultation with the individual or, if appropriate, with the individual's representative.

**10.7(2)** The individual will be informed in writing of the reasons for the termination of services; furnished information on how the individual may appeal the decision as provided in rule 111—10.8(216B); and provided with a description of the services of the Iowa client assistance program and how to contact that program.

**10.7(3)** For those individuals who have been determined incapable of achieving an employment outcome, their circumstances will be reviewed annually, if requested, unless they have refused services, are no longer in the state, their whereabouts are unknown, or they have a medical condition which is rapidly progressive or terminal.

[ARC 0461C, IAB 11/28/12, effective 1/2/13]

**111—10.8(216B) Dispute resolution process.** This rule defines the procedures under which the dispute resolution process, required by the Rehabilitation Act of 1973, shall be conducted by the department.

#### **10.8(1) Definitions.**

*“Administrative review”* means a procedure by which the department may provide an opportunity for an applicant or eligible individual to express and seek remedy for dissatisfaction with a decision regarding the furnishing or denial of services.

*“Formal hearing”* means a procedure whereby an applicant or eligible individual who is dissatisfied with the findings of an administrative review or mediation concerning the furnishing or denial of services may request a timely review of those determinations before an impartial hearing officer.

While the department encourages the use of the administrative review process to resolve grievances, the administrative review process is not to be used as a means to delay mediation or a formal hearing before an impartial hearing officer unless the parties jointly agree to a delay. An applicant or eligible individual may elect to proceed directly either to mediation or to the formal hearing process. The department will not suspend, reduce, or terminate vocational rehabilitation services to any applicant or eligible individual throughout the administrative review, mediation or formal hearing process before a final agreement or decision is made, unless the applicant or eligible individual or, as appropriate, the applicant's or eligible individual's representative so requests, or the department has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the applicant or eligible individual.

"*Mediation*" means an alternative which an applicant or eligible individual may choose if the applicant or eligible individual is dissatisfied with the findings of an administrative review concerning the furnishing or denial of services.

**10.8(2)** *Administrative review.* An applicant or eligible individual may request review of a decision regarding furnishing or denial of services with which the applicant or eligible individual is dissatisfied by submitting a letter to the program administrator of field operations.

*a.* The program administrator shall acknowledge receipt of the letter and arrangements shall be made for the administrative review to be held at a mutually convenient date, time, and place which shall be within ten days after receipt of the request for review. The applicant or eligible individual shall also be notified of the applicant's or eligible individual's right to obtain assistance through the Iowa client assistance program.

*b.* The administrative review shall consist of review of the case file and any other documentation involved in the subject matter of the review; interviews with the service specialists for the blind and any others directly involved with the subject matter of the review; and an interview with the applicant or eligible individual or, as appropriate, a representative of the applicant or eligible individual.

*c.* The program administrator shall issue a written decision within five days of the review. The decision shall set forth the issue, principle, and relevant facts established during the review; pertinent provision of law, administrative rule or department policy; and the reasoning upon which the decision is based. The letter transmitting the decision shall advise the applicant or eligible individual that the applicant or eligible individual shall inform the program administrator within seven days that either: (1) the applicant or eligible individual accepts the decision; or (2) the applicant or eligible individual does not accept the decision and wishes to proceed either to mediation or to a formal hearing.

*d.* A record of the decision and any action resulting from the decision shall be sent to the applicant or eligible individual by mail. The decision and a record of any action resulting from the decision shall be entered into the case file.

**10.8(3)** *Mediation.* An applicant or eligible individual who is dissatisfied with the findings of an administrative review or who has elected to bypass the administrative review process may request mediation by submitting a letter to the program administrator. This letter must be received within seven days of the date of determination of the administrative review, if an administrative review has been conducted.

*a.* The program administrator shall acknowledge receipt of the request for mediation and shall make arrangements for mediation to occur within 30 days of the request to initiate the dispute resolution process. The date, time, and place shall be mutually agreeable to all parties. The applicant or eligible individual shall be notified in writing of the right to submit evidence or information to support the applicant's or eligible individual's position and to obtain representation to be present during the mediation sessions. The applicant or eligible individual shall also be notified of the applicant's or eligible individual's right to obtain assistance through the Iowa client assistance program. All mediation sessions shall be held in a timely manner and shall be concluded within 45 days of the date that the applicant or eligible individual initiated the dispute resolution process, unless an extension of this time is agreed upon by all parties. The department will pay costs for the mediator and, when appropriate, transportation, meals and lodging expenses for the applicant or eligible individual which are directly associated with the mediation process. The program administrator will determine who will represent the department during mediation sessions.

b. The department will maintain a list of individuals who are impartial, qualified mediators and knowledgeable in laws (including regulations) relating to the provision of vocational rehabilitation services.

c. A mediator will be selected at random or by agreement of the director and the applicant or eligible individual or, as appropriate, the applicant's or eligible individual's representative from the list described in paragraph "b."

d. Discussions which occur during the mediation process shall be confidential and shall not be used as evidence in any subsequent due process hearing or civil proceeding.

e. All agreements reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement. This agreement shall be prepared by the mediator and mailed within seven days to all parties. The decision and a record of any action resulting from the decision shall be entered into the case file.

f. Either party to the dispute may request a formal hearing. This request must be in writing and must be submitted to the director within seven days of the date of the written mediation agreement.

**10.8(4) Formal hearing.** An applicant or eligible individual who is dissatisfied with any determinations made concerning the furnishing or denial of vocational rehabilitation services, or the findings of an administrative review or mediation if an administrative review or mediation took place, may request a formal hearing by submitting a letter to the director.

a. The director shall acknowledge receipt of the request and make arrangements for a formal hearing to be held within 60 days of the request of the applicant or eligible individual to initiate the dispute resolution process at a date, time, and place mutually agreeable to both parties. The applicant or eligible individual shall also be notified of the right to have a representative present at the formal hearing and to seek assistance through the Iowa client assistance program. Reasonable time extensions shall be granted for good cause shown at the request of a party or at the request of both parties.

b. The impartial hearing officer shall be an individual who is not an employee of a public agency other than an administrative law judge, hearing examiner, or employee of an institution of higher education. (An individual is not an employee of a public agency solely because the individual is paid by that agency to serve as a hearing officer.) The impartial hearing officer: (1) is not a member of the commission for the blind; (2) has not been involved in previous decisions regarding the vocational rehabilitation of the applicant or eligible individual; (3) has knowledge of the delivery of vocational rehabilitation services, the state plan, and the federal regulations and state rules governing the provision of services; (4) has received training with respect to the performance of official duties; and (5) has no personal, professional, or financial interest that would be in conflict with the hearing officer's objectivity. The director may also request that other designated department personnel be present at the formal hearing. At the request of the applicant or eligible individual, a representative of the applicant or eligible individual and a representative of the Iowa client assistance program may also be present. Any of these persons shall have the opportunity to present relevant evidence.

c. An impartial hearing officer must be selected on a random basis or by agreement between the director and the applicant or eligible individual or, as appropriate, the applicant's or eligible individual's representative from a pool of persons qualified to be an impartial hearing officer.

d. The impartial hearing officer shall inform those present of the confidentiality of matters discussed. The proceedings shall be recorded and, if necessary, transcribed.

e. Within 30 days of the completion of the formal hearing, the decision of the impartial hearing officer shall be mailed to the applicant or eligible individual or, if appropriate, the applicant's or eligible individual's representative, and to the director. A representative of the Iowa client assistance program who has attended the formal hearing shall also receive a copy of the decision. The applicant or eligible individual may receive a copy of the transcript of the hearing upon written request to the director. The decision and a record of any action resulting from the decision shall be entered into the case file.

The decision of the impartial hearing officer shall be based upon the provisions of the approved state plan, the federal Vocational Rehabilitation Act of 1973, federal vocational rehabilitation regulations, and state rules and policies.

f. The decision of the impartial hearing officer is final.

**10.8(5) Documents provided.** Transcripts, notices, responses, and other documents which are an integral part of the dispute resolution process shall be provided to involved parties in standard print format. An applicant or eligible individual, or representative of an applicant or eligible individual, or other involved party may request provision of documents in an alternative medium. Documents in the alternative medium shall be provided in a timely manner.

[ARC 0461C, IAB 11/28/12, effective 1/2/13]

**111—10.9(216B) Applicant’s and eligible individual’s rights.** The counselor/teacher must inform the applicant or eligible individual of the applicant’s or eligible individual’s rights as follows:

**10.9(1)** A written statement of rights, which sets forth the department’s policies and practices with regard to administrative review, fair hearing, confidentiality of records and nondiscrimination, shall be provided to the applicant as a part of the application process.

**10.9(2)** When an applicant is determined ineligible to receive vocational rehabilitation services, the applicant shall receive written notification of the right to appeal and information concerning services available through the Iowa client assistance program.

**10.9(3)** The individual plan for employment will include a statement that the individual has been informed of the department’s policies regarding administrative review, fair hearing, confidentiality of records and nondiscrimination.

**10.9(4)** Upon termination of services through the standard case closure procedure, the individual shall be given a written statement of the right to appeal the termination, including information about services available through the Iowa client assistance program.

**10.9(5)** When disagreement occurs, staff shall verbally inform the applicant or individual of the right to appeal and provide information about services available through the Iowa client assistance program.

**111—10.10(17A) Forms.** The following forms are used by the vocational rehabilitation services program:

1. Application for rehabilitation services—used for application for vocational rehabilitation services from the department.

2. Individual plan for employment (IPE)—used by the counselor/teacher and individual to develop a blind person’s program for rehabilitation. The IPE must contain the following statements: mutual agreement and understanding between individual and counselor; department’s program responsibilities; individual responsibilities; review and evaluation of progress toward objectives and goal; and individual rights and remedies. In addition, the IPE provides for mutual development of a vocational goal, summary of planned services, accepted criteria for review and evaluation purposes and individual acceptance and response.

[ARC 0461C, IAB 11/28/12, effective 1/2/13]

These rules are intended to implement Iowa Code chapter 216B.

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[Filed ARC 0461C (Notice ARC 0181C, IAB 6/27/12), IAB 11/28/12, effective 1/2/13]

◇ Two or more ARCs



CHAPTER 11  
INDEPENDENT LIVING REHABILITATION SERVICES

[Prior to 9/21/88, see Blind, Division for the[423] Ch 11]

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

**111—11.1(216B) Function.** Independent living rehabilitation services assist blind Iowans who are ineligible for traditional vocational rehabilitation services to achieve their maximum level of independence within family and community life.

**111—11.2(216B) Services.** Independent living rehabilitation services may include, but are not limited to: teaching alternative techniques of blindness; guidance and counseling; orientation and mobility training; referral; recreational activities; provision and instruction in the use of telecommunication, sensory and other technological aids and devices; and provision of technical assistance through consultation with health care providers and other agencies and organizations who serve blind persons.

Joint planning between the eligible individual and the staff will be employed in the development of an independent living rehabilitation plan (ILRP) in order to identify independent living objectives and services that will be most beneficial in achieving an eligible individual's independence. Eligible individuals will be given the option of waiving the right to a formal, detailed ILRP and may choose to simply list their independent living objectives.

[ARC 0461C, IAB 11/28/12, effective 1/2/13]

**111—11.3(216B) State plan.** The state plan for independent living (SPIL) is developed pursuant to federal regulations and is submitted to the United States Department of Education, rehabilitation services administration. The SPIL delineates expenditure of funds, describes administrative procedures, establishes program goals, and identifies the scope and extent of services. It is developed, implemented, and evaluated jointly by the Iowa department for the blind, the department of education, division of vocational rehabilitation services, and the Iowa statewide independent living council. The SPIL must be reviewed and revised as necessary but not less than once every three years.

**111—11.4(216B) Application for independent living services for older individuals who are blind.** The application delineates expenditure of funds, establishes program goals, identifies the scope and extent of services, and defines a plan of operation. The application is submitted to the U.S. Department of Education, Rehabilitation Services Administration. The application assures compliance with federal regulations governing the administration of this program, identifies reporting requirements, and ensures that the following activities will be conducted:

1. Needed services that contribute to the maintenance of, or the increased independence of, older individuals who are blind;
2. Capacity-building efforts, including collaboration with other agencies and organizations; and
3. Outreach to promote community awareness, involvement, and assistance.

[ARC 0461C, IAB 11/28/12, effective 1/2/13]

**111—11.5(216B) Eligibility.** To be eligible for independent living rehabilitation services, an individual must meet the following criteria: (1) have a severe visual impairment; (2) either be aged 55 or older, or have a severe mental, cognitive, physical, or other sensory impairment; (3) experience a severe limitation in ability to function independently in the family or community, or to obtain, maintain, or advance in employment; and (4) there must be a reasonable expectation that independent living rehabilitation services will improve the individual's ability to function, continue functioning, or move toward functioning independently in family or community, or to continue in employment.

Eligibility will be determined in compliance with applicable federal and state laws prohibiting discrimination on the basis of age, race, creed, color, sex, national origin, religion or disability. Provision of independent living rehabilitation services is not contingent upon economic need. No duration of residence requirement is imposed that excludes from services any applicant who is present in the state.

**11.5(1) and 11.5(2)** Rescinded IAB 6/26/02, effective 7/31/02.

**111—11.6(216B) Application procedures.** Persons desiring independent living rehabilitation services should contact the department office and must complete the Application for Independent Living Rehabilitation Services form.

**111—11.7(216B) Consideration of comparable services and benefits.**

**11.7(1)** Full consideration is given to any comparable services and benefits available to a blind person under any program (for example, workers' compensation, supplemental security income, social security disability insurance) to meet in whole or in part the cost of independent living rehabilitation services provided to an individual except assessment for determining eligibility and independent living rehabilitation needs; counseling and guidance; information and referral; and personal and vocational adjustment training and related training supplies.

**11.7(2)** Full consideration of comparable services and benefits shall not be given when this consideration would delay the provision of services to an individual at extreme medical risk. A determination of extreme medical risk shall be based upon medical evidence provided by an appropriately licensed medical professional.

**111—11.8(216B) Termination of services.**

**11.8(1)** A decision to terminate independent living rehabilitation services shall be made only with the full participation of the eligible individual or, as appropriate, the eligible individual's parent, guardian or other representative, unless the eligible individual has refused to participate, the eligible individual is no longer present in the state, or the eligible individual's whereabouts are unknown.

**11.8(2)** An eligible individual who is dissatisfied with the determination to terminate services may appeal the determination as provided in rule 111—11.9(216B).

**111—11.9(216B) Dispute resolution process.** This rule defines the procedures under which the dispute resolution process shall be conducted by the department.

**11.9(1) Definitions.**

*"Administrative review"* means a procedure by which the department may provide an opportunity for an applicant or eligible individual to express and seek remedy for dissatisfaction with a decision regarding the furnishing or denial of services.

*"Formal hearing"* means a procedure whereby an applicant or eligible individual who is dissatisfied with the findings of an administrative review or mediation concerning the furnishing or denial of services may request a timely review of those determinations before an impartial hearing officer.

While the department encourages the use of the administrative review process to resolve grievances, the administrative review process is not to be used as a means to delay mediation or a formal hearing before an impartial hearing officer unless the parties jointly agree to a delay. An applicant or eligible individual may elect to proceed directly either to mediation or to the formal hearing process. The department will not suspend, reduce, or terminate independent living rehabilitation services to any applicant or eligible individual throughout the administrative review, mediation or formal hearing process before a final agreement or decision is made, unless the applicant or eligible individual or, as appropriate, the applicant's or eligible individual's representative so requests, or the department has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the applicant or eligible individual.

*"Mediation"* means an alternative which an applicant or eligible individual may choose if the applicant or eligible individual is dissatisfied with the findings of an administrative review concerning the furnishing or denial of services.

**11.9(2) Administrative review.** An applicant for, or eligible individual of, independent living rehabilitation services may request review of a decision regarding provision or denial of services with which the applicant or eligible individual is dissatisfied by submitting a letter to the program administrator of field operations.

*a.* The program administrator shall acknowledge receipt of the letter and arrangements shall be made for the administrative review to be held at a mutually convenient date, time and place which shall be within

ten days after receipt of the request for review. The applicant or eligible individual shall also be notified of the applicant's or eligible individual's right to obtain assistance through the Iowa client assistance program.

*b.* The administrative review shall consist of: review of the case file and any other documentation involved in the subject matter of the review; interviews with the service specialist for the blind and any others directly involved with the subject matter of the review; and an interview with the applicant or eligible individual or, as appropriate, a representative of the applicant or eligible individual.

*c.* The program administrator shall issue a written decision within five days of the review. The decision shall set forth the issue, principle, and relevant facts established during the review; pertinent provisions of law, administrative rule or department policy; and the reasoning upon which the decision is based. The letter transmitting the decision shall advise the applicant or eligible individual that the applicant or eligible individual shall inform the program administrator within seven days that either: (1) the applicant or eligible individual accepts the decision; or (2) the applicant or eligible individual does not accept the decision and wishes to proceed either to mediation or to a formal hearing.

*d.* A record of the decision and any action resulting from the decision shall be sent to the applicant or eligible individual by mail. The decision and a record of any action resulting from the decision shall be entered into the case file.

**11.9(3) Mediation.** An applicant or eligible individual who is dissatisfied with the findings of an administrative review or has elected to bypass the administrative review process may request mediation by submitting a letter to the program administrator. This letter must be received within seven days of the date of determination of the administrative review, if an administrative review has been conducted.

*a.* The program administrator shall acknowledge receipt of the request for mediation and shall make arrangements for mediation to occur within 30 days of the request to initiate the dispute resolution process. The date, time, and place shall be mutually agreeable to all parties. The applicant or eligible individual shall be notified in writing of the right to submit evidence or information to support the applicant's or eligible individual's position and to obtain representation to be present during the mediation sessions. The applicant or eligible individual shall also be notified of the applicant's or eligible individual's right to obtain assistance through the Iowa client assistance program. All mediation sessions shall be held in a timely manner and shall be concluded within 45 days of the date that the applicant or eligible individual initiated the dispute resolution process, unless an extension of this time is agreed upon by all parties. The department will pay costs for the mediator and, when appropriate, transportation, meals and lodging expenses for the applicant or eligible individual which are directly associated with the mediation process. The program administrator will determine who will represent the department during mediation sessions.

*b.* The department will maintain a list of individuals who are impartial, qualified mediators and knowledgeable in laws (including regulations) relating to the provision of vocational rehabilitation and independent living rehabilitation services.

*c.* A mediator will be selected at random or by agreement of the director and the applicant or eligible individual or, as appropriate, the applicant's or eligible individual's representative from the list described in paragraph 11.9(3) "b."

*d.* Discussions which occur during the mediation process shall be confidential and shall not be used as evidence in any subsequent due process hearing or civil proceeding.

*e.* All agreements reached by the parties to the dispute and the mediation process shall be set forth in a written mediation agreement. This agreement shall be prepared by the mediator and mailed within seven days to all parties.

*f.* Either party to the dispute may request a formal hearing. This request must be in writing and must be submitted to the director within seven days of the date of the written mediation agreement.

**11.9(4) Formal hearing.** An applicant or eligible individual who is dissatisfied with any determinations made concerning the furnishing or denial of independent living rehabilitation services or the findings of an administrative review or mediation if an administrative review or mediation took place may request a formal hearing by submitting a letter to the director.

*a.* The director shall acknowledge receipt of the request and make arrangements for a formal hearing to be held within 60 days of the request of the applicant or eligible individual to initiate the dispute resolution process at a date, time and place mutually agreeable to both parties. The applicant or eligible

individual shall be notified of the right to have a representative present at the formal hearing and to seek assistance through the Iowa client assistance program. Reasonable time extensions shall be granted for good cause shown at the request of a party or at the request of both parties.

*b.* The impartial hearing officer shall be an individual who is not an employee of a public agency other than an administrative law judge, hearing examiner, or employee of an institution of higher education. (An individual is not an employee of a public agency solely because the individual is paid by that agency to serve as a hearing officer.) The impartial hearing officer (1) is not a member of the commission for the blind; (2) has not been involved in previous decisions regarding the independent living rehabilitation services of the applicant or eligible individual; (3) has knowledge of the delivery of independent living rehabilitation services, the state plan, and the federal regulations and state rules governing the provision of services; (4) has received training with respect to the performance of official duties; and (5) has no personal, professional, or financial interest that would be in conflict with the hearing officer's objectivity. The director may also request that other designated department personnel be present at the formal hearing. At the request of the applicant or eligible individual, a representative of the applicant or eligible individual and a representative of the Iowa client assistance program may also be present. Any of these persons shall have the opportunity to present relevant evidence.

*c.* An impartial hearing officer must be selected on a random basis or by agreement between the director and the applicant or eligible individual or, as appropriate, the applicant's or eligible individual's representative from a pool of persons qualified to be an impartial hearing officer.

*d.* The impartial hearing officer shall inform those present of the confidentiality of matters discussed. The proceedings shall be recorded.

*e.* Within 30 days of the completion of the formal hearing, the decision of the impartial hearing officer shall be mailed to the applicant or eligible individual or, if appropriate, the applicant's or eligible individual's representative and to the director. A representative of the Iowa client assistance program who has attended the formal hearing shall also receive a copy of the decision. The applicant or eligible individual may receive a copy of the transcript of the hearing upon written request to the director.

The decision of the impartial hearing officer shall be based upon the provisions of the approved state plan for independent living, the federal Rehabilitation Act, and state rules and policies.

*f.* The decision of the impartial hearing officer is final.

**11.9(5) Documents provided.** Transcripts, notices, responses and other documents which are an integral part of the dispute resolution process shall be provided to involved parties in standard print format. An applicant or eligible individual, or representative of an applicant or eligible individual, or other involved party, may request provision of documents in alternative media. Documents in alternative media shall be provided in a timely manner.

[ARC 0461C, IAB 11/28/12, effective 1/2/13]

**111—11.10(216B) Applicant's and eligible individual's rights.** The service specialist for the blind must inform the applicant or eligible individual of the applicant's or eligible individual's rights as follows:

**11.10(1)** Written information on the Iowa client assistance program and on the department's policies and practices with regard to administrative review, fair hearing, confidentiality of records and nondiscrimination shall be provided to the applicant as a part of the application process. This information shall also be made available in the applicant's media of choice. Language interpreters will be used as necessary.

**11.10(2)** When an applicant is determined ineligible to receive independent living rehabilitation services, the applicant shall receive written notification of the right to appeal and information concerning services available through the Iowa client assistance program.

**11.10(3)** The independent living rehabilitation plan will include information in the eligible individual's media of choice on the department's policies regarding administrative review, fair hearing, confidentiality of records and nondiscrimination. Language interpreters will be used as necessary.

**11.10(4)** Upon termination of a case due to ineligibility, the individual shall be given information in the individual's media of choice on the right to appeal the termination, including information about services available through the Iowa client assistance program. Language interpreters will be used as necessary.

**11.10(5)** When disagreement occurs, staff shall verbally inform the applicant or individual of the right to appeal and provide information about services available through the Iowa client assistance program.

**111—11.11(216B) Forms.** The following forms are used by the independent living rehabilitation services program:

1. Application for Independent Living Rehabilitation Services—used for application for independent living rehabilitation services from the department.
2. Independent Living Rehabilitation Plan (ILRP) used to develop a blind person's program for rehabilitation by providing for mutual development of goals, objectives, a summary of planned services, criteria for review and evaluation and a time frame for completion of services.
3. Waiver of Independent Living Rehabilitation Plan—a signed statement acknowledging the eligible individual's choice to waive an ILRP and instead simply list the eligible individual's independent living objectives.

These rules are intended to implement Iowa Code chapter 216B.

[Filed 12/23/87, Notice 10/21/87—published 1/13/88, effective 2/17/88]

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CHAPTER 12  
WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

**111—12.1(17A) Applicability.** This chapter outlines a uniform process for the granting of waivers from rules implemented by the department. The intent of this chapter is to allow persons to seek exceptions to the application of rules implemented by the department.

**12.1(1) Definitions.**

“*Commission*” means the three-member statutory commission for the blind.

“*Department*” means the department for the blind.

“*Director*” means the director of the department for the blind.

“*Person*” means an individual, corporation, government or governmental subdivision or agency, partnership or association, or any legal entity.

“*Waiver*” means action by the director that suspends in whole or in part the requirements or provisions of a rule as applied to a person on the basis of the particular circumstances of that person. For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”

**12.1(2) Authority.**

*a.* A waiver from rules adopted by the commission may be granted in accordance with this chapter if (1) the commission has exclusive rule-making authority to promulgate the rule from which a waiver is requested or has final decision-making authority over a contested case in which a waiver is requested; and (2) no federal or state statute or rule otherwise controls the granting of a waiver from the rule for which a waiver is requested.

*b.* No waiver may be granted for a requirement that is imposed by statute. Any waiver must be consistent with statute.

**111—12.2(17A) Director discretion.** The decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the director upon consideration of all relevant factors. The director may bring a request for a waiver to the commission for discussion prior to issuing a decision on the waiver. The director shall notify the commission of any waiver granted or denied.

**12.2(1)** The director may, in response to a completed petition or on the director’s own motion, grant a waiver from a rule, in whole or in part, as applied to the circumstances of a specified situation if the director finds each of the following:

*a.* Application of the rule to the person at issue would result in hardship or injustice to that person; and

*b.* Waiver on the basis of the particular circumstances relative to that specified person would be consistent with the public interest; and

*c.* Waiver in the specific case would not prejudice the substantial legal rights of any person; and

*d.* Waiver in the specific case would not have a negative impact on any person affected by the waiver.

In determining whether a waiver should be granted, the director shall consider the public interest, policies and legislative intent of the statute on which the rule is based. When the rule from which a waiver is sought establishes administrative deadlines, the director shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all constituents.

**12.2(2)** Special waiver rules not precluded. These uniform waiver rules shall not preclude the director from granting waivers in other contexts or on the basis of other standards if a statute or other department rule authorizes the director to do so and the director deems it appropriate to do so.

**12.2(3)** Time period of waiver. A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the director, a waiver may be renewed if the director finds that grounds for the waiver continue to exist.

**111—12.3(17A) Person's responsibilities in filing a waiver petition.**

**12.3(1) Application.** All petitions for waiver must be submitted in writing to the Director, Department for the Blind, 524 Fourth Street, Des Moines, Iowa 50309-2364. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

**12.3(2) Content of petition.** A petition for waiver shall include the following information where applicable and known to the person (for an example of a petition for waiver, see Exhibit A at the end of this chapter):

- a. A description and citation of the specific rule from which a waiver is requested.
- b. The specific waiver or variance requested, including the precise scope and operative period that the waiver will extend.
- c. The relevant facts that the petitioner believes would justify a waiver.
- d. A signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.
- e. A history of any prior contacts between the department and the petitioner relating to the regulated activity, license, or grant affected by the proposed waiver, including a description of each affected item held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, or grant within the last five years.
- f. A detailed statement of the impact on any person affected by the granting of a waiver.
- g. Any information known to the person regarding the commission's or department's treatment of similar cases.
- h. The name, address, and telephone number of any federal or state public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver.
- i. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.
- j. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.
- k. Signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver.

**111—12.4(17A) Burden of persuasion.** The petitioner shall assume the burden of persuasion when a petition is filed for a waiver from a rule.

**111—12.5(17A) Notice.** The department shall acknowledge a petition upon receipt. The department shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the department may give notice to other persons.

To accomplish this notice provision, the department may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the department attesting that notice has been provided.

**111—12.6(17A) Department responsibilities regarding petition for waiver.**

**12.6(1) Additional information.** Prior to issuing an order granting or denying a waiver, the department may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the director may, on the director's own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the director or the director's designee.

**12.6(2) Hearing procedures.** The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in three situations: (1) to any petition for a waiver filed within a contested case; (2) when the director so provides by rule or order; or (3) when a statute so requires.

**12.6(3) Ruling.** An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant

facts and the reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

**12.6(4) Conditions.** The director may condition the granting of the waiver on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

**12.6(5) Time for ruling.** The director shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the director shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

**12.6(6) When deemed denied.** Failure of the director to grant or deny a petition within the required time period shall be deemed a denial of that petition by the director.

**12.6(7) Service of order.** Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law by certified mail at the person’s last-known address.

**111—12.7(17A) Public availability.** Subject to the provisions of Iowa Code section 17A.3(1)“e,” the department shall maintain a record of all orders granting or denying waivers under this chapter. All final rulings in response to requests for waivers shall be indexed and available to members of the public at the Department for the Blind, 524 Fourth Street, Des Moines, Iowa 50309-2364.

**111—12.8(17A) Voiding or cancellation.** A waiver is void if the material facts upon which the request is based are not true or if material facts have been withheld. The director may at any time cancel a waiver upon appropriate notice if the director finds that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver have failed to achieve the objectives of the statute, or the requester has failed to comply with the conditions of the order.

**111—12.9(17A) Violations.** Violation of conditions in the waiver approval is the equivalent of violation of the particular rule for which the waiver is granted and is subject to the same remedies or penalties.

**111—12.10(17A) Defense.** After the director issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

**111—12.11(17A) Appeals; judicial review.** Judicial review of the director’s decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

Exhibit A

Sample Petition (Request) for Waiver  
BEFORE THE DEPARTMENT FOR THE BLIND

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Petition by (insert name of petitioner) for the waiver of (insert rule citation) relating to (insert the subject matter).	}	PETITION FOR WAIVER
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Requests for waiver from a department rule shall include the following information in the petition for waiver where applicable and known:

- a. Provide petitioner’s (person asking for a waiver) name, address, and telephone number.
- b. Describe and cite to the specific rule from which a waiver is requested.
- c. Describe the specific waiver requested and include the exact scope and time period that the waiver will extend.
- d. Explain the important facts that the petitioner believes justify a waiver. Include in your answer why (1) applying the rule will result in hardship/injustice to the petitioner; (2) granting a waiver or variance to the petitioner is consistent with the public interest; and (3) granting the waiver or variance will not prejudice the substantial legal rights of any person.

*e.* Provide a history of prior contacts between the department and petitioner relating to the regulated activity, license, or grant that would be affected by the waiver. Include a description of each affected license or grant held by the petitioner, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, or grant within the last five years.

*f.* Provide a detailed statement of the impact on any person affected by the granting of a waiver.

*g.* Provide information known to the petitioner regarding the department’s treatment of similar cases.

*h.* Provide the name, address, and telephone number of any state or federal public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver.

*i.* Provide the name, address, and telephone number of any person or entity that would be adversely affected or disadvantaged by the granting of the waiver.

*j.* Provide the name, address, and telephone number of any person with knowledge of the relevant or important facts relating to the requested waiver.

*k.* Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver.

I hereby attest to the accuracy and truthfulness of the above information.

\_\_\_\_\_  
Petitioner’s Signature

\_\_\_\_\_  
Date

Petitioner should note the following when requesting or petitioning for a waiver:

1. The petitioner has the burden of proving to the director that (a) application of the rule to the petitioner would result in hardship or injustice to the petitioner; (b) waiver on the basis of the particular circumstances relative to the petitioner would be consistent with the public interest; (c) waiver in the specific case would not prejudice the substantial legal rights of any person; and (d) waiver in the specific case would not have a negative impact on any person affected by the waiver.

2. The director may request additional information from or request an informal meeting with the petitioner prior to issuing a ruling granting or denying a request for waiver.

3. All petitions for waiver must be submitted in writing to the Director, Department for the Blind, 524 Fourth Street, Des Moines, Iowa 50309-2364. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

These rules are intended to implement Iowa Code section 17A.9A and Executive Order Number 11

CHAPTER 13  
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

[Prior to 9/21/88, see Blind, Division for the[423] Ch 13]

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

**111—13.1(17A,22) Definitions.** As used in this chapter:

“*Agency*” in these rules means the department for the blind.

“*Authorization for release of information*” means the form prescribed by the agency for the purpose of authorizing the release of a confidential record, signed and dated by the person empowered to release the information.

“*Case record*” means the file of personally identifiable or confidential information on a client, collected pursuant to the provisions of the Rehabilitation Act of 1973.

“*Client*” means an individual who is applying for or who has applied for, or who is receiving or has received, benefits or services under any agency program.

“*Confidential record*” in these rules 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*” in these rules means the agency, or a person lawfully delegated authority by the agency to act for the agency in implementing Iowa Code chapter 22.

“*Open record*” in these rules means a record other than a confidential record.

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

“*Record*” in these rules means the whole or part of a “public record,” as defined in Iowa Code section 22.1, that is owned by or in the physical possession of this agency.

“*Record system*” in these rules 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.

**111—13.2(17A,22) Statement of policy.** The purpose of this chapter is to facilitate broad 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.

**111—13.3(17A,22) Requests for access to records.**

**13.3(1) Location of record.** A request for access to a record should be directed to the director of the department for the blind or the particular agency office where the record is kept. If the location of the record is not known by the requester, the request shall be directed to the Department for the Blind, 524 Fourth Street, Des Moines, Iowa 50309. If a request for access to a record is misdirected, agency personnel will promptly forward the request to the appropriate person within the agency.

**13.3(2) Office hours.** Open records shall be made available during all customary office hours, which are between 8 a.m. and 4:30 p.m. daily, excluding Saturdays, Sundays and legal holidays.

**13.3(3) Request for access.** Requests for access to open records may be made in writing, in person, by electronic mail, or by telephone. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail or telephone requests shall include the name, address, and phone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

**13.3(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 custodian 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 section 22.8(4) or 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 111—13.4(17A,22) and other applicable provisions of law.

**13.3(5) *Security of record.*** No person shall, 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.

**13.3(6) *Copying.*** A reasonable number of copies of an open record may be made in the agency's office. If photocopy equipment is not available in the agency office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

**13.3(7) *Fees.***

*a.* When charged. The agency may charge fees in connection with the examination or copying of records only if the fees are authorized by law. 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. Price schedules for published materials and for photocopies of records supplied by the agency shall be prominently posted in agency offices. 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 and posted in agency offices by the custodian. 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 when the supervision time required is in excess of one-half hour. The custodian shall prominently post in agency offices the hourly fees to be charged for supervision of records during examination and copying. That 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.* 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 part of the estimated fee.

(2) When a requester has previously failed to pay a fee charged 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 the requester.

*e.* A client shall not be charged a search and supervisory fee nor a copying fee for access to the client's own case record.

[ARC 0461C, IAB 11/28/12, effective 1/2/13]

**111—13.4(17A,22) 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 111—13.3(17A,22).

**13.4(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.

**13.4(2) Requests.** The custodian may require a request to examine and copy a confidential record to 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.

**13.4(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 the record, is identified in that record, and whose 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.

**13.4(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 the requester.

**13.4(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.

**111—13.5(17A,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.

**13.5(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.

**13.5(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 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, 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 filing 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.

**13.5(3) Failure to request.** Failure of a person to request confidential record treatment for a record does not preclude the agency 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.

**13.5(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 filed, or when the custodian receives a request for access to the record by a member of the public.

**13.5(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 filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

**13.5(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 shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify 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.

**111—13.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records.** Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any agency proceeding. Requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the custodian. The request to review a written statement must be dated and signed by requester, and shall include the current address and telephone number of the requester or the requester's representative.

**111—13.7(17A,22) Authorization for release of information by the subject of a confidential record.** The subject of a confidential record may consent to agency disclosure to a third party of that portion of a record concerning the subject by completing an "Authorization for release of information" form. The consent must identify the record or records that may be disclosed; the person, or class of persons, to whom the record or records may be disclosed; and, if applicable, the time period during which the record may be disclosed. The agency may require the subject of the record and the person to whom the record is to be disclosed to provide proof of identity.

**111—13.8(17A,22) Notice to suppliers of information.** When the agency requests provision of information by a client or any other person, the agency shall inform the person of the following:

1. The authority under which the information is collected;
2. The principal purposes for which the information will be used or released;
3. What persons outside the agency might routinely have access to the information;
4. Which parts of the requested information are required and which are optional, and the consequences of failing to provide the information requested; and
5. The situations in which completing an "Authorization for release of information" form is or is not required before releasing information.

**13.8(1)** Persons who are unable to communicate in English or who rely on special modes of communication shall be provided explanations through methods they can understand.

**13.8(2)** This information shall be provided to each client for agency services as a part of the application process.

**111—13.9(17A,22) Disclosures without the consent of the subject.** Open records are routinely disclosed without the consent of the subject. To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Lawful disclosure will generally occur without notice:

1. For routine use as defined in rule 111—13.10(17A,22) or in the notice for a particular record system;
2. To a recipient who has provided the agency with advance written assurance that the record will be used solely for statistical purposes in an audit or evaluation, or in research which is directly connected with the administration of the agency's programs; provided that the record is used only for the purposes provided; is released only to individuals officially connected with the audit, evaluation or research; is not released to the subject of the record; is managed in a manner which safeguards confidentiality; and does not appear in a final product in a form which would reveal personally identifiable information;
3. 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;
4. When necessary to protect the subject of the record or others when the subject poses a threat to safety;
5. To the legislative services agency under Iowa Code section 2A.3;
6. In the course of employee disciplinary proceedings; or
7. In response to a court order or subpoena.

**111—13.10(17A,22) Routine use.** "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. It includes disclosures required to be made by statutes other than the public records law, Iowa Code chapter 22.

To the extent allowed by law, the following uses are considered routine uses of all agency records:

1. Disclosure to commissioners or staff members who have a need for the record in the performance of their duties. The custodian of the record may upon request of any commissioner or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use a confidential record;
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;
3. Disclosure to the department of inspections and appeals, or to other impartial hearing officers appointed by the director pursuant to these rules, for matters in which services or functions are being performed on behalf of the agency;
4. Transfers of information within the agency, to other state or federal agencies, or to local units of government as appropriate to administer the program for which the information is collected;
5. Release of information to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully; or
6. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

**111—13.11(17A,22) Consensual disclosure of confidential records.**

**13.11(1)** The subject of a record may complete the agency Authorization for Release of Information form, consenting in writing to agency disclosure of confidential records as provided in rule 111—13.7(17A,22).

**13.11(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.

**13.11(3)** Obtaining information from a third party. In order to obtain medical or psychological records or other information needed to determine program eligibility or to provide services, the agency may be required to make requests for information to third parties which may involve the release of personally identifiable and confidential information about the subject of a record. Except as provided in rule 111—13.9(17A,22), the agency may do so only when an Authorization for Release of Information form has been properly executed by the subject of the record.

**111—13.12(17A,22) Release to subject.** The subject of a confidential record, or the representative of the subject of a confidential record, may file a written request to review confidential records about that person. The agency shall make all information in the case record accessible to the subject or the subject’s representative in a timely manner, except:

1. The identity of a person providing information to the agency when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18);
2. The work product of an attorney; and
3. Investigative reports of peace officers, except as required pursuant to Iowa Code section 22.7(5).

**13.12(1)** Medical or psychological information which the staff believes may be harmful to the subject of a case record shall not be released directly to the individual, but must be provided through a representative, a physician, psychiatrist, or a certified substance abuse counselor, as appropriate.

**13.12(2)** If 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.

**111—13.13(17A,22) Availability of records.**

**13.13(1) General.** Agency records are open for public inspection and copying unless otherwise provided by rule or law.

**13.13(2) Confidential records.** The following records, categorized by agency program area, shall be held confidential. The statutory authority for confidentiality of each record system is given.

<u>Records</u>	<u>Statutory Authority</u>
ADMINISTRATION	
Central blind registry (c)	Iowa Code section 259.1
Client financial documents	Iowa Code section 259.1
Employment applications	Iowa Code section 22.7(11)
Minutes, closed meetings, commission for the blind	Iowa Code section 21.5(4)
Performance evaluations	Iowa Code section 19A.15
Personnel records	Iowa Code section 19A.15
Personnel attendance records	Iowa Code section 19A.15
Portions of agency staff manuals or indexed general statements of policy when disclosure of the information would: (1) enable law violators to avoid detection; (2)	Iowa Code sections 17A.2 and 17A.3

facilitate disregard of requirements imposed by law; or  
 (3) give a clearly improper advantage to persons who are  
 in an adverse position to the agency

Unemployment claims	Iowa 19A.15	Code	section
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#### ADULT ORIENTATION AND ADJUSTMENT CENTER

Orientation center student information	Iowa 259.1	Code	section
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Orientation center student list	Iowa 259.1	Code	section
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Orientation center student/alumni data base (c)	Iowa 259.1	Code	section
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#### BUSINESS ENTERPRISE PROGRAM

Closing vendor inventories	Iowa 259.1	Code	section
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Individual operator management training records	Iowa 259.1	Code	section
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Operator assignment selection records	Iowa 259.1	Code	section
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Vendor equipment inventories	Iowa 259.1	Code	section
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Vendor financial information	Iowa 259.1	Code	section
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#### INDEPENDENT LIVING REHABILITATION SERVICES

Case records	Iowa 259.1	Code	section
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Client case number book	Iowa 259.1	Code	section
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Client closure book	Iowa 259.1	Code	section
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Client contact itineraries	Iowa 259.1	Code	section
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Client master list	Iowa 259.1	Code	section
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Client satisfaction survey	Iowa 259.1	Code	section
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Library field contact report	Iowa 259.1	Code	section
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Field operations staff reports	Iowa Code section 259.1
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#### LIBRARY FOR THE BLIND AND PHYSICALLY HANDICAPPED

American college testing service test materials	Iowa Code section 22.7(19)
American printing house for the blind availability inquiries	Iowa Code section 22.7(13)
Applications for library service	Iowa Code section 259.1
Book order records	Iowa Code section 22.7(13)
Book transcription completion records	Iowa Code section 22.7(13)
Braille thermoform request records	Iowa Code section 22.7(13)
Circulation records	Iowa Code section 22.7(13)
CMLS microfiche and printout book of library patron records	Iowa Code section 22.7(13)
EI cassette machine pilot project user listing	Iowa Code section 22.7(13)
Hand-thermoformed braille library patron list	Iowa Code section 22.7(13)
Instructional materials center purchase orders	Iowa Code section 22.7(13)
Interlibrary library patron loan records	Iowa Code section 22.7(13)
Iowa basic skills test materials	Iowa Code section 22.7(19)
Iowa federation of women's clubs library patron request records	Iowa Code section 22.7(13)
Iowa Lions bible distribution list	Iowa Code section 22.7(13)
Library patron correspondence	Iowa Code section 22.7(13)
Library patron equipment inventory	Iowa Code section 22.7(13)
Library patron orders, monthly reports	Iowa Code section 22.7(13)
Library patron braille requests and production records	Iowa Code section 22.7(13)
Library patron braille request exchange list	Iowa Code section 22.7(13)

New library patron listing	Iowa Code section 22.7(13)
NLS subscription transaction records	Iowa Code section 22.7(13)
NLS updates on library patron service changes	Iowa Code section 22.7(13)
Out-of-state library patron duplication records	Iowa Code section 22.7(13)
Pioneer service reports	Iowa Code section 22.7(13)
Recording for the blind circulation records	Iowa Code section 22.7(13)
Tape purchase correspondence	Iowa Code section 22.7(13)
Textbook tracking materials	Iowa Code section 22.7(13)

#### VOCATIONAL REHABILITATION SERVICES

Annual SGA closure list	Iowa Code section 259.1
Case records	Iowa Code section 259.1
Certification letters	Iowa Code section 259.1
Claim and verification requests	Iowa Code section 259.1
Client contact itineraries	Iowa Code section 259.1
Client master list	Iowa Code section 259.1
Client orientation schedule list	Iowa Code section 259.1
Client satisfaction survey	Iowa Code section 259.1
Department of personnel braille typing tests	Iowa Code section 19A.15
Monthly field operations staff reports	Iowa Code section 259.1
SSA responses to claim & verification requests	Iowa Code section 259.1

NOTE: (c) indicates information is also stored on a computer database.

**13.13(3)** *Personally identifiable information.* This subrule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems defined in rule 111—13.1(17A,22). For each record system, this subrule

describes the legal authority for the collection of information. These record systems, categorized by agency program area, are:

<u>Records</u>	<u>Legal Authority for Collection</u>		
<b>ADMINISTRATION</b>			
Accounts payable vouchers	Iowa	Code	section
	259.1		
Central blind registry (c)	Iowa	Code	section
	259.1		
Client financial documents	Iowa	Code	section
	259.1		
Employment applications	Iowa	Code	section
	19A.15		
Performance evaluations	Iowa	Code	section
	19A.15		
Personnel records	Iowa	Code	section
	19A.15		
Personnel attendance records	Iowa	Code	section
	19A.15		
Unemployment claims	Iowa	Code	section
	19A.15		
<b>ADULT ORIENTATION AND ADJUSTMENT CENTER</b>			
Orientation center student information	Iowa	Code	section
	259.1		
Orientation center student list	Iowa	Code	section
	259.1		
Orientation center student/alumni database (c)	Iowa	Code	section
	259.1		
<b>BUSINESS ENTERPRISE PROGRAM</b>			
Closing vendor inventories	Iowa	Code	section
	259.1		
Individual operator management training records	Iowa	Code	section
	259.1		
Operator assignment selection records	Iowa	Code	section
	259.1		
Vendor equipment inventories	Iowa	Code	section
	259.1		
Vendor financial information	Iowa	Code	section
	259.1		

### INDEPENDENT LIVING REHABILITATION SERVICES

Case records	Iowa 259.1	Code	section
Client case number book	Iowa 259.1	Code	section
Client closure book	Iowa 259.1	Code	section
Client contact itineraries	Iowa 259.1	Code	section
Client equipment inventory cards	Iowa 259.1	Code	section
Library field contact report	Iowa 259.1	Code	section
Field operations monthly reports	Iowa 259.1	Code	section

### LIBRARY FOR THE BLIND AND PHYSICALLY HANDICAPPED

American printing house for the blind library patron availability inquiries	Iowa 216B.3	Code	section
Applications for library service	Iowa 216B.3	Code	section
Book order records	Iowa 216B.3	Code	section
Book transcription completion records	Iowa 22.7(13)	Code	section
Braille thermoform request records	Iowa 22.7(13)	Code	section
Circulation records	Iowa 216B.3	Code	section
CMLS microfiche and printout book of library patron records	Iowa 216B.3	Code	section
EI cassette machine pilot project user listing	Iowa 216B.3	Code	section
Hand-thermoformed braille library patron list	Iowa 216B.3	Code	section
Instructional materials center purchase orders	Iowa 216B.3	Code	section
Interlibrary library patron loan records	Iowa 216B.3	Code	section
Iowa federation of women's clubs library patron request tracking	Iowa 216B.3	Code	section
Iowa Lions bible distribution list	Iowa 216B.3	Code	section

Library patron correspondence	Iowa 216B.3	Code	section
Library patron equipment inventory	Iowa 216B.3	Code	section
Library patron orders, monthly reports	Iowa 216B.3	Code	section
Library patron braille requests and production records	Iowa 216B.3	Code	section
Library patron braille request exchange list	Iowa 216B.3	Code	section
New library patron listing	Iowa 216B.3	Code	section
NLS subscription transaction records	Iowa 216B.3	Code	section
NLS updates on library patron service changes	Iowa 216B.3	Code	section
Out-of-state library patron duplication records	Iowa 216B.3	Code	section
Pioneer service reports	Iowa 216B.3	Code	section
Recording for the blind circulation records	Iowa 216B.3	Code	section
Tape purchase correspondence	Iowa 216B.3	Code	section
Textbook tracking materials	Iowa 216B.3	Code	section

#### VOCATIONAL REHABILITATION SERVICES

Annual SGA closure list	Iowa 259.1	Code	section
Case records	Iowa 259.1	Code	section
Certification letters	Iowa 259.1	Code	section
Claim & verification requests	Iowa 259.1	Code	section
Client contact itineraries	Iowa 259.1	Code	section
Client orientation schedule list	Iowa 259.1	Code	section
SSA responses to claim & verification requests	Iowa 259.1	Code	section

NOTE: (c) indicates information is also stored on a computer database.

**13.13(4)** *Open records.* Agency records are open for public inspection and copying unless otherwise provided by rule or law. These record systems, categorized by agency program area, are routinely available to the public. They do not generally contain personally identifiable information or confidential information.  
Records

#### ADMINISTRATION

Acknowledgments of gifts and bequests contributions  
Administrative rules, public docket and rule-making records  
Advisory boards, commissions, associations, committees and task forces: correspondence, minutes and general information  
Aids and appliances, accounts receivable  
Annual reports  
Building blueprints  
Building equipment reference manuals and data  
Cooperative agreements  
CSAVR, correspondence and general information  
Dept. of education, correspondence, fiscal records and general information  
Dept. of personnel procedures manual  
Employee assistance fund information  
Employee handbook  
Equipment maintenance agreements  
Executive calendar, current and past  
Federal financial reports  
Federal funds request authorizations  
Federal government agencies, correspondence and reports  
Film and videotape information  
Fire evacuation procedures  
Fiscal information on special projects  
Forms, indexed  
General complaints and criticisms from the public  
General letters of appreciation from the public  
General requests and inquiries from the public  
General statements of agency policy, indexed  
Gift law, general information  
Iowa head injury committee  
Iowa management training system, general information  
Job opening announcements  
Legislators, listing  
Legislative correspondence and general information  
Mailing lists  
Maintenance work orders (c)  
Membership, payment approvals  
Minutes, Iowa commission for the blind  
Monthly financial reports, dept. of revenue  
National council of state agencies for the blind, correspondence and general information  
New staff seminar schedules and evaluations  
Out-of-state travel authorization requests and approvals  
Personnel classifications, job descriptions and pay schedules  
Personnel instructional pamphlets  
Photographs and resumes, administrator and commission members  
Pool/gym agreements  
Position description questionnaires

Press releases and news clippings  
Private organizations, correspondence and general information  
Product safety chemical data sheets  
Professional and technical associations, correspondence and general information  
Public records docket  
Publications  
Rehabilitation administrative management program, general information and correspondence  
Rehabnet, general information and memos  
Rental and lease agreements  
Sixtieth anniversary, general information  
Staff service certificates  
State government agencies, correspondence and reports  
State vehicle dispatcher monthly reports  
Statements of grant awards  
Studies, surveys and proposals  
28E agreements  
Utility consumption and cost data (c)

#### BUSINESS ENTERPRISE PROGRAM

Blueprints and equipment layouts  
Randolph-Sheppard Act  
State plan, Randolph-Sheppard Act  
Vendor forms

#### INDEPENDENT LIVING REHABILITATION SERVICES

CSAVR independent living committee  
Deaf-blind register  
Grant applications and instructional memos  
Independent living advisory committee, general information and minutes  
Independent living forms  
Independent living procedure memos and schedules  
In-service training grant, application and agendas  
Part C announcements and reference materials  
RCEP training advisory committee, general information and correspondence  
Reference materials on alternative techniques  
RSA 704 report  
RSA 70B report  
Special project grant, 1983  
State plan for independent living services  
Statewide independent living council, general information and minutes  
Title VII, part b grant, reports and correspondence

#### LIBRARY FOR THE BLIND AND PHYSICALLY HANDICAPPED

Acquisition of bibles, general information  
American printing house for the blind federal quota orders  
American federation for the blind directory of agencies  
APH central automated resource list  
Application transfer technique study  
Bibliographies, by subject  
Bindery tracking records  
Book inspection survey  
Books proofread for sale, listing

Braille alphabet cards  
Braille instruction manuals and sign booklets  
Brochures from other libraries for the blind  
Card catalog microfilming information  
Card catalog uniform entries authority  
Card file of print books about blindness  
Card file of cassettes processed  
Cassette books, number assignment record  
Catalog production and master records  
Censorship, general information  
Circulation, general information  
Comprehensive mailing list system (CMLS), general information  
Computer installation information  
Computer software and software manuals  
Copyright clearance records  
Deaf-blindness, general information  
Diebold repairs, general information  
Disabilities, general information  
Duplicators, general information  
EI cassette instructional video  
Eligibility, general information  
Equal employment opportunity, general information  
Equipment manuals  
Forms, inventory and masters (c)  
Free matter for the blind and physically handicapped, general information  
General library statistics  
Guidelines for tapists  
Health care facilities in Iowa, listing  
Historical collection of uncataloged examples of tactile systems  
Instructional materials center, general information  
Intention and completion forms for the American printing house for the blind  
Iowa computer-assisted network advisory board minutes, 1985  
Iowa federated women's clubs, listing  
Iowa library directory  
Iowa libraries: a time to grow 1985-90 (program planning guide)  
Iowa Lions foundation  
Large-type format, general information  
Lead worker, general information  
Library automation report, 1983  
Library consumer advisory committee minutes and general information  
Library grants  
Library materials invoices  
Library staff procedures manuals  
Logs, various department systems  
Machines, general information  
Magazine inventory  
Magazine transaction merge procedures  
Magazines, reference materials on selection, transcription and subscription  
Mailing lists  
Marantz, general repair information  
Modems, general information  
Monthly reports on nonusers of library service

National braille association bulletins  
NLS availability listings  
NLS automation reports  
NLS, general correspondence and information  
NLS removal authorization documentation  
Nonborrower purchase orders  
OCR scanners, general information  
Postal service, general information  
Publication catalogs  
Publishers, listing  
Radio reading for the blind, production information  
Reader enrollment and delivery systems (READS), general information  
Records management listing of library records  
Request for proposal for local area network  
Salvaging rigid talking book discs, instruction manual  
Shelving, general information  
Snowbirds, general information  
Space utilization report  
Speech/braille computer output, general information  
Titles received, book listing  
Training grant, general information  
Transcriber's workshop, documentation and information  
Vendor listing  
World book encyclopedia, informational material  
XESS, listing of books removed from the collection

NOTE: In addition to the above records, a complete inventory of all materials available for circulation is maintained in the library's card catalog.

#### VOCATIONAL REHABILITATION

Available readers and drivers listing  
Dept. of personnel, certified disabilities program  
Commissioner policies on service provision  
Computer technology reference materials  
Counselor instructional manual  
Field operations statistical reports  
504 subcommittee meeting records  
General resource materials on employment and vocational rehabilitation  
Health resources and information  
Information on U.S. civil service and personnel management  
In-service training agendas  
In-service training grant  
Job openings posting book  
Medical reference pamphlets and brochures  
Paratransit advisory committee reference materials  
Photographs  
RCEP training advisory committee reference listing  
Reference materials on Targeted jobs tax credit, Job training partnership Act and PWI programs  
Rehabilitation Act of 1973  
Rehabilitation services administration annual report on postemployment services and annual reviews  
Rehabilitation services administration federal regulations  
Rehabilitation services administration monthly cumulative caseload report  
Rehabilitation services administration quarterly cumulative caseload report  
Rehabilitation services administration program and cost report

Social security disability and SSI reference materials  
 Speeches by Kenneth Jernigan and Jacob tenBroek  
 SSA administrative procedure letters  
 SSA program instructions and resource materials  
 Staff procedure memos  
 Staff territory assignments  
 State facilities plan  
 State plan for vocational rehabilitation services  
 Supported employment reference materials  
 Telephone directories for DVRS and AEA personnel  
 Transition committee minutes and reference materials  
 Veterans administration resource materials  
 Vocational rehabilitation guidelines and procedures

NOTE: (c) indicates information is also stored on a computer database.

The following record systems, categorized by agency program area, are open to access by the public, but may contain personally identifiable or confidential information:

<u>Records</u>	<u>Statutory Authority</u>
<b>ADMINISTRATION</b>	
Accounts payable vouchers	Iowa Code section 259.1
Accounting interagency correspondence and information	Iowa Code sections 259.1 and 19A.15
Applications for education leave and educational assistance	Iowa Code section 19A.15
Correspondence, general	Iowa Code section 259.1
Gifts and bequests trust account records	Iowa Code section 216B.3
Minutes, supervisors meetings	Iowa Code section 259.1
<b>BUSINESS ENTERPRISE PROGRAM</b>	
Closed vending facilities	Iowa Code section 259.1
Correspondence, general	Iowa Code section 259.1
Correspondence, vendor	Iowa Code section 259.1
Licenses	Iowa Code section 259.1
Minutes, state vendor committee	Iowa Code section 259.1
Vending facilities (all locations)	Iowa Code section 259.1

INDEPENDENT SERVICES	LIVING	REHABILITATION			
Agency contact documentation			Iowa 259.1	Code	section
Bistate independent living center			Iowa 259.1	Code	section
Client equipment inventory cards			Iowa 259.1	Code	section
General correspondence, 1981-84			Iowa 259.1	Code	section
Helen Keller national center, grant, reports, and correspondence			Iowa 259.1	Code	section
LIBRARY FOR THE BLIND AND PHYSICALLY HANDICAPPED					
Braillewriter equipment inventory			Iowa 216B.3	Code	section
Marantz equipment inventory and repair records			Iowa 216B.3	Code	section
Proofreader circulation assignments			Iowa 216B.3	Code	section
Tape exchange correspondence			Iowa 216B.3	Code	section
Volunteer braille and tape production records			Iowa 216B.3	Code	section
VOCATIONAL REHABILITATION					
General correspondence			Iowa 259.1	Code	section
Intra-office and interoffice memos			Iowa 259.1	Code	section
Lions typewriter acquisition list			Iowa 259.1	Code	section

NOTE: (c) indicates information is also stored on a computer database.

**111—13.14(17A,22) Automated data processing capabilities.** All records are stored on paper and not in automated data processing systems unless otherwise noted. Data processing systems used by the agency do not permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system, unless specifically noted.

**111—13.15(17A,22) Applicability.** This chapter does not:

1. Require the agency to index or retrieve records which contain information about individuals by that person'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 records of grantees which administer state-funded programs, nor to individual vendors licensed by the agency pursuant to the federal Randolph-Sheppard Act; or
5. Make available to the public, 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 shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations of the agency.

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

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