CHAPTER 6
APPEAL PROCEDURES
[Prior to 9/7/88, see Public Instruction Department[670] Ch 51]

281—6.1(290) Scope of appeal. The rules of this chapter are applicable to all hearing requests seeking appellate review by the state board of education, the director of education, or the department of education.

281—6.2(256,290,17A) Definitions.

"Appellant," as used in this chapter, shall refer to a party bringing an appeal to the state board of education, the director of education or the department of education.

"Appellee," as used in this chapter, shall refer to the party in a matter against whom an appeal is taken, or the party whose interest is adverse to the reversal of a prior decision now on appeal to the state board of education, the director of education or the department of education.

"Board," as used in this chapter, shall refer to the state board of education.

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under 1998 Iowa Acts, chapter 1202, section 14.

"Default" means a dismissal of the appeal due to nonappearance at the hearing, either telephonically or in person, or for failure to request a continuance of the appeal hearing. Exceptions may be granted at the discretion of the presiding officer.

"Department" means the department of education.

"Director," as used in this chapter, shall refer to the director of education.

"Hearing panel," as used in this chapter, shall refer to the director of education, or the director's designee, sitting as the administrative law judge and two members of the department of education staff designated by the administrative law judge to hear the presentation of evidence or oral arguments concerning appeals which are unusual or which present issues of first impression.

"Issuance" means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

"Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

"Presiding officer" means the director of the department of education or the designated administrative law judge.

281—6.3(290,17A) Manner of appeal.

6.3(1) An appeal shall be made in the form of an affidavit, unless an affidavit is not required by the statute establishing the right of appeal, which shall set forth the facts, any error complained of, or the reasons for the appeal in a plain and concise manner, and which shall be signed by the appellant and delivered to the office of the director by United States Postal Service, facsimile (fax), or personal service. The affidavit shall be considered as filed with the agency on the date of the United States Postal Service postmark, the date of arrival of the facsimile, or the date personal service is made. Time shall be computed as provided in Iowa Code subsection 4.1(34).

6.3(2) The director or designee shall, within five days after the filing of such affidavit, notify the proper officer in writing of the taking of an appeal, and the officer shall, within ten days, file with the board a complete certified transcript of the record and proceedings related to the decision appealed. A certified copy of the minutes of the meeting of the governmental body making the decision appealed shall satisfy this requirement.

6.3(3) The director or designee shall send written notice by certified mail, return receipt requested, at least ten days prior to the hearing, unless the ten-day period is waived by all parties, to all persons known to be interested. Such notice shall include the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing is to be held; a reference to the particular sections of the statutes and rules involved; and a short and plain statement of the matters asserted. A copy of the appeal hearing rules shall be included with the notice.

The notice of hearing shall contain the following information: identification of all parties including the name, address and telephone number of the person who will act as advocate for the agency or the state and of parties' counsel where known; reference to the procedural rules governing conduct of the contested case proceeding; reference to the procedural rules governing informal settlement; and identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., director of the department or administrative law judge from the department of inspections and appeals).

6.3(4) and **6.3(5)** Rescinded IAB 5/5/99, effective 6/9/99.

6.3(6) An amendment to the affidavit of appeal may be made by the appellant up to ten working days prior to the hearing. With the agreement of all parties, an amendment may be made until the hearing is closed to the receipt of evidence.

281—6.4(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

6.4(1) A written application for a continuance shall:

a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The agency may waive notice of such requests for a particular case or an entire class of cases.

6.4(2) In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

g. The existence of a conflict in the schedules of counsel, parties, or witnesses;

h. The timeliness of the request; and

i. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

281—6.5(17A) Intervention.

6.5(1) *Motion.* A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

6.5(2) *When filed.* Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

6.5(3) *Grounds for intervention.* The movant shall demonstrate that: (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant

is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

6.5(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

281—6.6(17A) Motions.

6.6(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

6.6(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the agency or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

6.6(3) The presiding officer may schedule oral argument on any motion.

6.6(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the agency or an order of the presiding officer.

6.6(5) Motions for summary judgment. Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 6.20(17A) and appeal pursuant to rule 6.21(17A).

281—6.7(17A) Disqualification.

6.7(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

a. Has a personal bias or prejudice concerning a party or a representative of a party;

b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;

e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

f. Has a spouse or relative within the third degree of relationship that: (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or

g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

6.7(2) The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrules 6.7(3) and 6.14(9).

6.7(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

6.7(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 6.7(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.11(3). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect.

281—6.8(290) Subpoena of witnesses and costs.

6.8(1) The director, on behalf of the board, has the power to issue subpoenas for witnesses, to compel the attendance of those witnesses, and the giving of evidence by them, in the same manner and to the same extent as the district court may do. An agency subpoena shall be issued to a party on written request made at least ten days prior to the hearing. Parties are responsible for obtaining service of their own subpoenas.

6.8(2) Witnesses and serving officers may be allowed the same compensation as is paid for like attendance or service in district court. The witness's fees and mileage are considered costs of the appeal under Iowa Code section 290.4; costs are assigned to the nonprevailing party. The witness's fees and expenses for hearings brought under other statutes and rules are the responsibility of the party requesting or subpoenaing the witness.

6.8(3) Motion to quash or modify. The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

6.8(4) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

281—6.9(17A) Discovery. Discovery procedures applicable to civil actions are available to all parties in contested cases before the department. Evidence obtained in discovery may be used in the hearing before the department if that evidence would otherwise be admissible in the hearing.

Any deviations from the time periods established for compliance with discovery in the Iowa Rules of Civil Procedure shall be determined by the administrative law judge upon opportunity for all parties to be heard.

281—6.10(17A) Consolidation—severance.

6.10(1) *Consolidation.* The administrative law judge may consolidate any or all matters at issue in two or more appeals where: (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties of those proceedings.

6.10(2) *Severance.* The administrative law judge may, for good cause shown, order any contested case proceedings or portions thereof severed.

281—6.11(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the agency in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

281—6.12(17A) Appeal hearing.

6.12(1) *On stipulated record.* Upon the written agreement of the parties, the transcript of the record and proceedings as certified by the proper official and any other documents mutually stipulated may become the evidentiary basis for the hearing on appeal. In the event that the hearing is to be conducted on the stipulated record, the following procedures shall be followed:

a. At the established time, the name and nature of the case are announced by the administrative law judge. Inquiries shall be made as to whether the respective parties or their representatives are present.

b. When it is determined that parties or their representatives are present, or that absent parties have been properly notified, the hearing may proceed. When any absent party has been properly notified, this fact shall be entered into the record. When notice to an absent party has been sent by certified mail, return requested, the return shall be placed in the record. If the notice was sent in another manner, sufficient details of the time and manner of notice shall be entered into the record. If it is not determined whether absent parties have been properly notified, the proceedings may be recessed at the discretion of the administrative law judge.

c. The appeal hearing on stipulated record is nonevidentiary in nature. No witnesses will be heard nor evidence received. The controversy will be decided on the basis of the stipulated record and the arguments presented on behalf of the respective parties. The parties shall be so reminded by the administrative law judge at the outset of the proceedings.

d. Illustrative materials such as charts and maps may be used to illustrate an argument, but may not be used as new evidence to prove a point in controversy.

e. Unless the administrative law judge determines otherwise, each party shall have one spokesperson.

f. The appellant shall present the first argument. The appellee shall follow with argument and rebuttal of the appellant's argument. A third party who was a party in the initial proceeding but not either appellant or appellee may, at the discretion of the administrative law judge, be allowed to make remarks. The appellant may then rebut the proceeding arguments but may not introduce new arguments.

g. Appellant and appellee shall have equal time to present their arguments and appellant's total time shall not be increased by the right of rebuttal. The time limit for argument shall be established by the administrative law judge and shall in most instances be limited to 30 minutes for each party.

h. At the conclusion of arguments, each party shall have the opportunity to submit written briefs or arguments, or additional written briefs if they have already done so. Any party submitting a written brief or argument must deliver a copy to all other parties, preferably in advance of the appeal hearing. In the event that all parties have not been furnished a copy of another party's brief at least two days in advance of the appeal hearing, each party shall be afforded the opportunity to submit reply briefs within ten days of the conclusion of the appeal hearing. The opportunity to submit reply briefs may be waived by any party and shall be entered into the record.

i. The appeal hearing is then closed upon order of the administrative law judge.

6.12(2) *Evidentiary hearing.* When the parties do not agree to a stipulated record, the following procedure shall be followed:

a. The appellant may begin by giving an opening statement of a general nature which may include the basis for the appeal, the type and nature of the evidence the appellant proposes to introduce and the conclusions which the appellant believes the evidence will substantiate.

b. With the permission of the administrative law judge, a third party directly involved in the original proceeding but neither appellant nor appellee may make an opening statement of a general nature.

c. The appellee may present an opening statement of a general nature which may include the type and nature of evidence proposed to be introduced and the conclusions which the appellee believes the evidence will substantiate. The appellee may present an opening statement following the appellant's opening statement, if any, or may reserve opening for immediately prior to its case-in-chief.

d. The appellant may then call witnesses and present other evidence.

e. Each witness shall be administered an oath by the administrative law judge. The oath shall be in the following form: "Do you solemnly swear or affirm that the testimony or evidence which you are about to give in the proceeding now in hearing shall be the truth, the whole truth, and nothing but the truth?"

f. The appellee may cross-examine all witnesses and may examine and question all other evidence.

g. Upon conclusion of the presentation of evidence by the appellant, the appellee may call witnesses and present other evidence. The appellant may cross-examine all witnesses and may examine and question all other evidence.

h. The hearing panel members may address questions to each witness at the conclusion of questioning by the appellant and the appellee.

i. At the discretion of the administrative law judge, either party may be permitted to present rebuttal witnesses and additional evidence of matters previously placed in evidence. No new matters of evidence may be raised during this period of rebuttal.

j. The appellant shall make a final argument for a length of time established by the administrative law judge, in which the appellant may review the evidence presented, the conclusions which the appellant believes most logically follow from the evidence and a recommendation of action to the hearing panel.

k. The appellee may make a final argument for a period of time equal to that granted to the appellant in which the appellee may review the evidence presented, the conclusions which the appellee believes most logically follow from the evidence and a recommendation of action to the hearing panel.

l. At the discretion of the administrative law judge, a third party directly involved in the original proceeding but neither the appellant nor appellee may make a final argument.

m. At the discretion of the administrative law judge, either side may be given an opportunity to rebut the other's final argument. No new arguments may be raised during rebuttal.

n. Any party may submit written briefs. Written briefs by nonparties may be accepted at the discretion of the administrative law judge. Any party submitting a written brief or argument shall deliver a copy to all other parties, preferably in advance of the appeal hearing. In the event that all parties have not been furnished a copy of another party's brief or argument at least two days in advance of the appeal hearing, each party shall be afforded the opportunity to submit reply briefs within ten days of the conclusion of the appeal hearing. The opportunity to submit reply briefs may be waived by a party and the waiver shall be entered into the record.

o. Rules of evidence.

(1) Because the administrative law judge must decide each case correctly as to the parties before the panel and the administrative law judge must also decide what is in the public's best interest, it is necessary to allow for the reception of all relevant evidence which will contribute to an informed result. The ultimate test of admissibility is whether the offered evidence is reliable, probative, and relevant.

(2) Irrelevant, immaterial, or unduly repetitious evidence should be excluded. A finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. The hearing panel shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be required to be submitted in verified written form.

(3) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original, if available.

(4) Witnesses at the hearing, or persons whose testimony has been submitted in written form, if available, shall be subject to cross-examination by any party as necessary for a full and true disclosure of the facts.

(5) Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the hearing panel. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, and shall be afforded an opportunity to contest such facts before the decision is announced.

(6) The hearing panel's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

(7) No decision shall be made except upon consideration of the whole record or portions that may be cited by any party and as supported by and in accordance with the reliable, probative and substantial evidence.

6.12(3) *Telephone hearings.* Upon agreement of the parties, a hearing may take place by telephone conference call.

281—6.13 Reserved.

281—6.14(17A) Ex parte communication.

6.14(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the agency or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 6.7(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

6.14(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

6.14(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

6.14(4) To avoid prohibited ex parte communications notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

6.14(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

6.14(6) The executive director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 6.14(1).

6.14(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 6.4(17A).

6.14(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order or disclosed. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

6.14(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

6.14(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the agency. Violation of ex parte communication prohibitions by agency personnel shall be reported to the legal consultant for the department of education for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

281—6.15(17A) Record.

6.15(1) Upon the request of any party, oral proceedings in whole or in part shall be either transcribed, if recorded by certified shorthand reporters, or copied if recorded by mechanical means, with the expense for the transcription of copies charged to the requesting party.

6.15(2) All recordings, stenographic notes or transcriptions of oral proceedings shall be maintained and preserved by the department for at least five years from the date of a decision.

6.15(3) The record of a hearing under these rules shall include:

a. All pleadings, motions and intermediate rulings.
b. All evidence received or considered and all other submissions.
c. A statement of matters officially noticed.
d. All questions and offers of proof, objections, and rulings thereon.
e. All proposed findings of fact and conclusions of law.
f. Any decision, opinion or report by the administrative law judge presented at the hearing.

281—6.16(17A) Recording costs. Upon request, the department of education shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

281—6.17(290,17A) Decision and review.

6.17(1) The presiding officer, after due consideration of the record and the arguments presented, and with the advice and counsel of the staff members, shall make a decision on the appeal. The proposed decision shall be mailed to the parties or their representatives by regular mail.

6.17(2) The decision shall be based on the laws of the United States, the state of Iowa and the regulations and policies of the department of education and shall be in the best interest of education.

6.17(3) The decision of the presiding officer shall be placed on the agenda of the next regular board meeting for review of the record and decision unless the decision is within the province of the director to make.

6.17(4) Any adversely affected party may appeal a proposed decision to the state board within 20 days after issuance of the proposed decision.

6.17(5) An appeal of a proposed decision is initiated by filing a timely notice of appeal with the office of the director. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

a. The names and addresses of the parties initiating the appeal;

b. The proposed decision to be appealed;

c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision;

d. The relief sought; and

e. The grounds for relief.

6.17(6) Appeal procedures.

a. Unless otherwise ordered, within 15 days of a party's filing of the notice of appeal, each appealing party may file exceptions and briefs. Within 10 days after the filing of exceptions and briefs by the appealing party, any party may file a responsive brief;

b. Briefs shall cite any applicable legal authority and specify relevant portions of the record in the proceeding below;

c. Briefs shall be limited to a maximum length of 25 pages; and

d. An opportunity for oral arguments may be given with the consent of the board. Written requests to present oral arguments shall be filed with the briefs.

6.17(7) The board may affirm, modify, or vacate the decision, or may direct a rehearing before the director or the director's designee.

6.17(8) Copies of the final decision shall be sent to the parties or their representatives by regular mail within five days after state board action, if required, on the proposed decision.

6.17(9) No individual who participates in the making of any decision shall have advocated in connection with the hearing, the specific controversy underlying the case, or other pending factually related matters. Nor shall any individual who participates in the making of any proposed decision be subject to the authority, direction, or discretion of any person who has advocated in connection with the hearing, the specific controversy underlying the hearing, or a pending related matter involving the same parties.

6.17(10) Rescinded IAB 8/21/02, effective 9/25/02.

281—6.18(290) Finality of decision. The decision is final upon board approval of the presiding officer's decision.

281—6.19(17A) Default.

6.19(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

6.19(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

6.19(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided. A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated

by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

6.19(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

6.19(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

6.19(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

6.19(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding.

6.19(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

6.19(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues but, unless the defaulting party has appeared, it cannot exceed the relief demanded.

6.19(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately.

281—6.20(17A) Application for rehearing of final decision. Any party may file an application for rehearing with the presiding officer stating the specific grounds therefor, and the relief sought, within 20 days after the issuance of any final decision by the board. A copy of the application shall be timely mailed by the department to all parties of record not joining therein. Such application for rehearing shall be deemed to have been denied unless the board or the presiding officer grants the application within 20 days of the filing. A rehearing shall not be granted unless it is necessary to correct a mistake of law or fact, or for other good cause.

281—6.21(17A) Rehearing.

6.21(1) In the event a rehearing is granted, the presiding officer, in arriving at a subsequent decision, may either review the record and arguments or may proceed with either a full or partial hearing under the appeal hearing provisions of this chapter.

6.21(2) Following the rehearing, the presiding officer shall place the proposed decision on the agenda of the next regular board meeting for review of the record and decision as provided for in 6.17(290,17A).

281—6.22(17A) Emergency adjudicative proceedings.

6.22(1) *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare and, consistent with the Constitution and other provisions of law, the department may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the department by emergency adjudicative order. Before issuing an emergency adjudicative order the department shall consider factors including, but not limited to, the following:

a. Whether there has been a sufficient factual investigation to ensure that the department is proceeding on the basis of reliable information;

b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

e. Whether the specific action contemplated by the department is necessary to avoid the immediate danger.

6.22(2) *Issuance of order.*

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the department's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

(1) Personal delivery;

(2) Certified mail, return receipt requested, to the last address on file with the department;

(3) Certified mail to the last address on file with the department;

(4) First-class mail to the last address on file with the department; or

(5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that department orders be sent by fax and has provided a fax number for that purpose.

c. To the degree practicable, the department shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

6.22(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the department shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

6.22(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the department shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which departmental proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further agency proceedings to a later date will be granted only in compelling circumstances upon application in writing.

These rules are intended to implement Iowa Code sections 256.7(6), 275.16, 282.18, 282.18(5), 282.32, 285.12, and Iowa Code chapter 290 and chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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