

282—11.35(256) Application denial and appeal. The executive director is authorized by Iowa Code section 256.151 to grant or deny applications for licensure. If the executive director denies an application for a license, certificate, or authorization, the executive director will send to the applicant by regular first-class mail written notice identifying the factual and legal basis for denying the application.

11.35(1) Mandatory grounds for license denial. The executive director will deny an application based on the grounds set forth in Iowa Code section 256.146(13).

11.35(2) Conviction of a crime and founded child abuse.

a. Disqualifying criminal convictions. The board shall deny an application for licensure pursuant to Iowa Code section 256.146(13), regardless of whether the judgment of conviction or sentence was deferred.

b. Other criminal convictions and founded child abuse. When determining whether a person should be denied licensure based on the conviction of any other crime, including a felony, or a founded report of child abuse, the executive director and the board will consider the following:

- (1) The nature and seriousness of the crime or founded abuse in relation to the position sought;
- (2) The time elapsed since the crime or founded abuse was committed;
- (3) The degree of rehabilitation that has taken place since the crime or founded abuse was committed;
- (4) The likelihood that the person will commit the same crime or abuse again;
- (5) The number of criminal convictions or founded abuses committed; and
- (6) Such additional factors as may in a particular case demonstrate mitigating circumstances or heightened risk to public safety.

11.35(3) Speech and intellectual freedom protections. The board may deny a license to or revoke the license of a person upon the board's finding by a preponderance of evidence that the person knowingly and intentionally discriminated against a student in violation of Iowa Code section 261H.2(3) or 279.73.

11.35(4) Fraudulent applications. An application will be considered fraudulent pursuant to Iowa Code section 256.146(13) "b"(2) if it contains any false representation of a material fact or any omission of a material fact that should have been disclosed at the time of application for licensure or is submitted with a false or forged diploma, certificate, affidavit, identification, or other document material to the applicant's qualification for licensure or material to any of the grounds for denial set forth in Iowa Code section 256.146(13).

11.35(5) Appeal procedure.

a. An applicant who is aggrieved by the denial of an application for licensure and who desires to challenge the decision of the executive director must appeal the decision and request a hearing before the board within 30 calendar days of the date the notice of license denial is mailed. An appeal and request for hearing must be in writing and is deemed made on the date of the United States Postal Service nonmetered postmark or the date of personal service to the board office. The request for hearing will specify the factual or legal errors the applicant contends were made by the executive director, must identify any factual disputes upon which the applicant desires an evidentiary hearing, and may provide additional written information or documents in support of licensure. If a request for hearing is timely made, the executive director will promptly issue a notice of contested case hearing on the grounds asserted by the applicant.

b. The board, in its discretion, may act as presiding officer at the contested case hearing, may hold the hearing before a panel of three board members, or may request that an administrative law judge act as presiding officer. The applicant may request that an administrative law judge act as presiding officer and render a proposed decision pursuant to rule 282—11.8(17A,256). A proposed decision by a panel of board members or an administrative law judge is subject to appeal or review by the board pursuant to rule 282—11.28(17A,256).

c. Hearings concerning licensure denial will be conducted according to the contested case procedural rules in this chapter. Evidence supporting the denial of the license may be presented by an assistant attorney general. While each party will have the burden of establishing the affirmative of matters asserted, the applicant will have the ultimate burden of persuasion as to the applicant's qualification for licensure.

d. On appeal, the board may grant or deny the application for licensure. If the application for licensure is denied, the board will state the reason or reasons for the denial and may state conditions under which the application could be granted, if applicable.

11.35(6) *Judicial review.* Judicial review of a final order of the board denying licensure may be sought in accordance with the provisions of Iowa Code section 17A.19, which are applicable to judicial review of an agency's final decision in a contested case. In order to exhaust administrative remedies, an applicant aggrieved by the executive director's denial of an application for licensure must timely appeal the adverse decision to the board.

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