

282—11.4 (17A,272) Complaint.

11.4(1) *Who may initiate.* The following entities may initiate a complaint:

a. Licensed practitioners employed by a school district or their educational entity or their recognized local or state professional organization.

b. Local boards of education.

c. Parents or guardians of students involved in the alleged complaint.

d. The executive director of the board of educational examiners if the following circumstances have been met:

(1) The executive director receives information that a practitioner:

1. Has been convicted of a felony criminal offense, or a misdemeanor criminal offense wherein the victim of the crime was 18 years of age or younger, and the executive director expressly determines within the complaint that the nature of the offense clearly and directly impacts the practitioner's fitness or ability to retain the specific license(s) or authorization(s) which the practitioner holds; or

2. Has been the subject of a founded report of child abuse placed upon the central registry maintained by the department of human services pursuant to Iowa Code section 232.71D and the executive director expressly determines within the complaint that the nature of the offense clearly and directly impacts the practitioner's fitness or ability to retain the specific license(s) or authorization(s) which the practitioner holds; or

3. Has not met a reporting requirement stipulated by Iowa Code section 272.15, Iowa Code section 279.43, 281—subrule 102.11(2), 282—Chapter 11, or 282—Chapter 25; or

4. Has falsified a license or authorization issued by the board; or

5. Has submitted false information on a license or authorization application filed with the board;

or

6. Does not hold the appropriate license for the assignment for which the practitioner is currently employed; or

7. Has assigned another practitioner to perform services for which the practitioner is not properly licensed; or

8. Has failed to comply with a board order as prohibited by 282—paragraph 25.3(7) “d”; and

(2) The executive director verifies the information or the alleged misconduct through review of official records maintained by the board, a court, the department of human services registry of founded child abuse reports, the practitioner licensing authority of another state, the department of education, the local school district, area education agency, or authorities in charge of the nonpublic school, or the executive director is presented with the falsified license; and

(3) No other complaint has been filed.

e. The department of transportation if the licensee named in the complaint holds a behind-the-wheel instructor's certification issued by the department and the complaint relates to an incident or incidents arising during the course of driver's education instruction.

f. An employee of the department of education who, while performing official duties, becomes aware of any alleged misconduct by an individual licensed under Iowa Code section 272.2.

11.4(2) *Form and content of the complaint.*

a. The complaint shall be in writing and signed by at least one complainant who has personal knowledge of an alleged violation of the board's rules or related state law or an authorized representative if the complainant is an organization. (An official form may be used. This form may be obtained from the board upon request.)

b. The complaint shall show venue as “BEFORE THE BOARD OF EDUCATIONAL EXAMINERS” and shall be captioned “COMPLAINT.”

c. The complaint shall contain the following information:

(1) The full name, address and telephone number of the complainant.

(2) The full name, address and telephone number, if known, of the respondent.

(3) A concise statement of the facts which clearly and specifically apprises the respondent of the details of the alleged violation of the criteria of professional practices or the criteria of competent performance and the relief sought by the complainant.

(4) An explanation of the basis of the complainant's personal knowledge of the facts underlying the complaint.

(5) A citation to the specific rule or law which the complainant alleges has been violated.

11.4(3) *Required copies—place and time of filing the complaint.*

a. A copy of the complaint must be filed with the board.

b. The complaint must be delivered personally or by mail to the office of the board. The current office address is the Grimes State Office Building, Third Floor, Des Moines, Iowa 50319-0147.

c. Timely filing is required in order to ensure the availability of witnesses and to avoid initiation of an investigation under conditions which may have been significantly altered during the period of delay. The conduct upon which it is based must have occurred or been discovered by the complainant within three years of filing of the complaint unless good cause is shown for an extension of this limitation.

11.4(4) *Amendment or withdrawal of complaint.* A complaint or any specification thereof may be amended or withdrawn by the complainant at any time. The parties to a complaint may mutually agree to the resolution of the complaint at any time in the proceeding prior to issuance of a final order by the board. The resolution must be committed to a written agreement and filed with the board. The agreement is not subject to approval by the board, but shall be acknowledged by the board and may be incorporated into an order of the board.

11.4(5) *Respondent entitled to copy of the complaint.* Immediately upon the board's determination that jurisdictional requirements have been met, the respondent shall be provided a copy of the complaint or amended complaint and any supporting documents attached to the complaint at the time of filing.

11.4(6) *Voluntary surrender of license—agreement to accept lesser sanction.* A practitioner may voluntarily surrender the practitioner's license or agree to accept a lesser sanction from the board prior to or after the filing of a complaint with the board without admitting the truth of the allegations of the complaint if a complaint is on file with the board. In order to voluntarily surrender a license or submit to a sanction, the practitioner must waive the right to hearing before the board and notify the board of the intent to surrender or accept sanction. The board may issue an order permanently revoking the practitioner's license if it is surrendered, or implementing the agreed upon sanction. The board may decline to issue an agreed upon sanction if, in the board's judgment, the agreed upon sanction is not appropriate for the circumstances of the case.

11.4(7) *Investigation of license reports.*

a. Reports received by the board from another state, territory or other jurisdiction concerning licenses or certificate revocation or suspension shall be reviewed and investigated by the board in the same manner as is prescribed in these rules for the review and investigation of written complaints.

b. Failure to report a license revocation, suspension or other disciplinary action taken by licensing authority of another state, territory or jurisdiction within 30 days of the final action by such licensing authority shall constitute cause for initiation of an investigation.

11.4(8) *Timely resolution of complaints.* Complaints filed with the board must be resolved within 180 days unless good cause can be shown for an extension of this limitation. The board will provide notice to the parties to a complaint prior to taking action to extend this time limitation upon its own motion.

11.4(9) *Confidentiality.* All complaint files, investigation files, other investigation reports, and other investigation information in the possession of the board or its employees or agents, which relate to licensee discipline, are privileged and confidential, and are not subject to discovery, subpoena, or other means of legal compulsion for their release to a person other than the respondent and the board and its employees and agents involved in licensee discipline, and are not admissible in evidence in a judicial or administrative proceeding other than the proceeding involving licensee discipline. However, investigative information in the possession of the board or its employees or agents which is related to licensee discipline may be disclosed to appropriate licensing authorities within this state, the appropriate

licensing authorities in another state, the District of Columbia, or a territory or country in which the licensee is licensed or has applied for a license. A final written decision and finding of fact by the board in a disciplinary proceeding is a public record.

[**ARC 8406B**, IAB 12/16/09, effective 1/20/10 (See Delay note at end of chapter); **ARC 8823B**, IAB 6/2/10, effective 5/14/10; **ARC 0026C**, IAB 3/7/12, effective 4/11/12; **ARC 0853C**, IAB 7/24/13, effective 8/28/13]