

681—19.18(17A) Waiver or variance from rule.

19.18(1) *Applicability.* Waiver or variance from board of regents rules may be requested but only in the event that:

a. The board of regents has exclusive rule-making authority to promulgate the rule from which waiver or variance is requested or has final decision-making authority over a contested case in which waiver or variance is requested; and

b. No federal or state statute or rule otherwise controls the grant of a waiver or variance from the rule from which waiver or variance is requested.

19.18(2) *Authority.* The board of regents, the president or superintendent of a regent institution, or designee, or the presiding officer as part of the decision in a contested case, may grant a waiver of, or variance of, or variance from, all or part of a rule to the extent allowed by these rules.

19.18(3) *Compliance with law.* No waiver or variance may be granted from a requirement that is imposed by state or federal statute. Any waiver or variance must be consistent with state or federal statute.

19.18(4) *Criteria.* A waiver or variance under this chapter may be granted only upon a showing that:

a. The waiver or variance will not harm other persons and will not adversely affect the public interest; and

b. There are exceptional circumstances which justify an exception to the general rule to the extent that the requester is unable to comply with the particular rule without undue hardship or compliance with the particular rule would be unnecessarily and unreasonably costly and serve no public benefit.

19.18(5) *Request.* All requests for waiver or variance must be in writing and shall include the following information:

a. The name, address, and telephone number of the person requesting the waiver or variance and the person's representative, if any;

b. The specific rule from which a waiver or variance is requested;

c. The nature of the waiver or variance requested, including any alternative means or other proposed condition or modification proposed to achieve the purpose of the rule;

d. An explanation of the reason for the waiver or variance, including all material facts relevant to the grant of the waiver or variance in question;

e. Any information known to the requester regarding the board of regents, or any regent institution's, treatment of similar cases;

f. The name, address and telephone number of any person(s) with knowledge of the matter with respect to which the waiver or variance is requested; and

g. Any necessary release of information authorizing persons with knowledge to disclose relevant information necessary to a decision.

19.18(6) *With whom filed.* A request for waiver or variance which pertains to a rule applicable to only a specific regent institution shall be submitted to the president or superintendent of that institution. A request for waiver or variance which pertains to a matter involving more than one regent institution, or the board of regents or its staff, shall be submitted to the Executive Director, Board of Regents, 100 Court Avenue, Des Moines, Iowa 50319. A request for waiver or variance which pertains to a pending contested case shall be filed in the contested case proceedings.

19.18(7) *Ruling.* Rulings on requests shall be in writing. The ruling shall include the reason for granting or denying the request and, if approved, the time period during which the waiver or variance is effective. Rulings on a waiver or variance shall be made in the following manner:

a. Requests submitted to the president or superintendent of a regent institution shall be decided by the president or superintendent, or designee.

b. Requests submitted to the board of regents shall be decided by the board, unless the board determines that the request was inappropriately submitted to it, in which case it shall forward the request to the appropriate decision maker as designated by these rules.

c. Requests submitted in a contested case shall be decided by the presiding officer in the contested case proceeding.

19.18(8) *Public availability.* All final rulings in response to requests for waiver or variances shall be indexed and available to members of the public at the offices listed below:

Board of Regents
Legal Affairs
100 Court Avenue
Des Moines, IA 50319

University of Iowa
Office of University Relations
5 Old Capitol
Iowa City, IA 52242

Iowa State University
University Legal Services
305 Beardshear Hall
Ames, IA 50010

University of Northern Iowa
Office of the Operations Auditor
242 Gilchrist Hall
Cedar Falls, IA 50614

Iowa School for the Deaf
Superintendent
1600 S. Highway 275
Council Bluffs, IA 51503

Iowa Braille and Sight Saving School
Superintendent
1002 G Avenue
Vinton, IA 52349

19.18(9) *Conditions.* The board of regents, or other designated decision maker allowed pursuant to these rules, may condition the grant of a waiver or variance on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means.

19.18(10) *Voiding or cancellation.* A waiver or variance is void if the material facts upon which the request is based are not true or if material facts have been withheld. The decision maker may at any time cancel a waiver or variance upon appropriate notice and hearing if it is determined 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 or variance have failed to achieve the objectives of the statute, or the requester has failed to comply with conditions set forth in the waiver or variance approval.

19.18(11) *Violations.* Violation of conditions in the waiver or variance approval is the equivalent of violation of the particular rule for which the waiver or variance is granted and is subject to the same remedies or penalties.

19.18(12) *Appeals.* Any request for an appeal from a decision on a waiver or variance request made by the board of regents, the president or superintendent of a regent institution, or designee, shall be in accordance with the procedures provided in Iowa Code chapter 17A.

Any request for an appeal from a decision by the presiding officer in a contested case proceeding which grants or denies a waiver or variance shall be made pursuant to the procedures provided in rule 681—20.26(17A) or rule 20.27(17A), as applicable.