

282—11.35 (272) Application denial and appeal. The executive director is authorized by Iowa Code section 272.7 to grant or deny applications for licensure. If the executive director denies an application for an initial or exchange license, certificate, or authorization, the executive director shall send to the applicant by regular first-class mail written notice identifying the factual and legal basis for denying the application. If the executive director denies an application to renew an existing license, certificate, or authorization, the provisions of rule 282—11.36(272) shall apply.

11.35(1) *Mandatory grounds for license denial.* The executive director shall deny an application based on the grounds set forth in Iowa Code section 272.2(14), including:

- a. The license application is fraudulent.
- b. The applicant's license or certification from another state is suspended or revoked.
- c. The applicant fails to meet board standards for application or for license renewal.
- d. The applicant is less than 21 years of age, except that a coaching authorization or paraeducator certificate may be issued to an applicant who is 18 years of age or older, as provided in Iowa Code sections 272.12 and 272.31. A student enrolled in a practitioner preparation program who meets board requirements for a temporary, limited purpose license and who is seeking to teach as part of the practicum or internship may be less than 21 years of age.

- e. The applicant has been convicted of one of the disqualifying criminal convictions set forth in paragraph 11.35(2) "a."

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

- a. *Disqualifying criminal convictions.* The board shall deny an application for licensure if the applicant or licensee has been convicted, has pled guilty to, or has been found guilty of the following criminal offenses, regardless of whether the judgment of conviction or sentence was deferred:

- (1) Any of the following forcible felonies included in Iowa Code section 702.11: child endangerment, assault, murder, sexual abuse, or kidnapping;

- (2) Any of the following criminal sexual offenses, as provided in Iowa Code chapter 709, involving a child:

1. First-, second- or third-degree sexual abuse committed on or with a person who is under the age of 18;

2. Lascivious acts with a child;

3. Detention in a brothel;

4. Assault with intent to commit sexual abuse;

5. Indecent contact with a child;

6. Sexual exploitation by a counselor; or

7. Lascivious conduct with a minor;

- (3) Incest involving a child as prohibited by Iowa Code section 726.2;

- (4) Dissemination and exhibition of obscene material to minors as prohibited by Iowa Code section 728.2; or

- (5) Telephone dissemination of obscene material to minors as prohibited by Iowa Code section 728.15.

- 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 shall 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 which 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) *Fraudulent applications.* An application shall be considered fraudulent pursuant to Iowa Code section 272.6(4) if it contains any false representation of a material fact or any omission of a material fact which 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 sections 272.2(14) and 272.6.

11.35(4) *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 shall 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 shall 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,272). 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,272).

c. Hearings concerning licensure denial shall 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 shall have the burden of establishing the affirmative of matters asserted, the applicant shall 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 shall state the reason or reasons for the denial and may state conditions under which the application could be granted, if applicable.

11.35(5) *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.