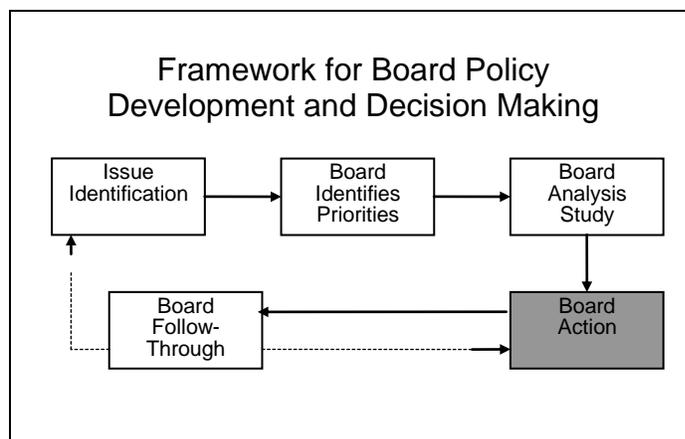


Iowa State Board of Education

Executive Summary

November 17, 2010



Agenda Item: Rules: Chapter 102 - Procedures for Charging and Investigating Incidents of Abuse of Students by School Employees (Notice)

Iowa Goal: All K-12 students will achieve at a high level.

Equity Impact Statement: These rule amendments make adjustments so that affected students are more equitably impacted.

Presenter: None (consent agenda)

Attachments: 1

Recommendation: It is recommended that the Board give public notice of its intent to amend Chapter 102.

Background: The proposed amendments are the result of routine Department review of these rules, as well as feedback from investigators. The proposed amendment in Item 1 conforms to the definition in Iowa Code section 280.28. The proposed edits in Items 2, 3, 6, 7, and 8 avoid use of the word "victim" inasmuch as that term is not in the underlying statute. The amendments in Items 4 and 5 are proposed as a result of actual practice and to make the process more user-friendly for students and their families.

EDUCATION DEPARTMENT [281]

Notice of Intended Action

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby proposes to amend Chapter 102, “Procedures for Charging and Investigating Incidents of Abuse of Students by School Employees,” Iowa Administrative Code.

The proposed amendments are the result of routine Department review of these rules, as well as feedback from designated investigators, as that term is defined in these rules. The proposed amendment in Item 1 conforms to the definition in Iowa Code section 280.28. The proposed edits in Items 2, 3, 6, 7, and 8 avoid use of the word “victim” inasmuch as that term is not in the underlying statute. The amendments in Items 4 and 5 are proposed as a result of actual practice and to make the process more user-friendly for students and their families.

An agencywide waiver provision is provided in 281—Chapter 4.

Interested individuals may make written comments on the proposed amendments on or before January 4, 2011, at 4:30 p.m. Comments on the proposed amendments should be directed to Carol Greta, Office of the Director, Iowa Department of Education, Second Floor, Grimes State Office Building, Des Moines, Iowa 50319–0146; telephone (515)281–8661; E–mail carol.greta@iowa.gov; or fax (515)281–4122.

These amendments are intended to implement Iowa Code section 280.17.

The following amendments are proposed.

ITEM 1. Amend rule **281—102.2(280)**, definition of “Sexual harassment,” as follows:

“*Sexual harassment*” means unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature when:

1. Submission to the conduct is made either implicitly or explicitly a term or condition of the student's education or benefits;

2. Submission to or rejection of the conduct is used as the basis for academic decisions affecting that student; or

3. The conduct has the purpose or effect of substantially interfering with a student's academic performance by creating an objectively intimidating, hostile, or offensive education environment.

ITEM 2. Amend rule **281—102.3(280)**, introductory paragraph, as follows:

281—102.3(280) Jurisdiction. To constitute a violation of these rules, acts of the school employee must be alleged to have occurred on school grounds, on school time, on a school-sponsored activity, or in a school-related context. To be investigable, the written report must include basic information showing that the ~~victim of the alleged abuse~~ student allegedly abused is or was a student at the time of the incident, that the alleged act of the school employee resulted in injury or otherwise meets the definition of abuse in these rules, and that the person responsible for the act is currently a school employee.

ITEM 3. Amend subrule **102.5(2)** as follows:

102.5(2) Adopt written procedures that establish persons to whom the school authorities will delegate a second level of investigation beyond the level-one procedures specifically described in these rules, including law enforcement authorities or the county attorney's office, personnel of the local office of the department of human services, or private parties experienced and knowledgeable in the area of abuse investigation. The second-level investigator shall not be a school employee, and shall be considered an independent contractor if remunerated for services rendered.

The adopted procedures shall conform to these rules and shall include provisions for the safety of a student when, in the opinion of the investigator, the student would be placed in imminent danger if continued contact is permitted between the school employee and the student.

These provisions shall include the options of:

- a. Temporary removal of the student from contact with the school employee.
- b. Temporary removal of the school employee from service.
- c. Any other appropriate action permissible under Iowa law to ensure the student's safety.

The adopted written procedures shall include a statement that the investigators appointed and retained under this chapter shall have access to any educational records of ~~a student who is the named victim of alleged abuse~~ the allegedly abused student, and access to the student for purposes of interviewing and investigating the allegation.

ITEM 4. Amend subrule **102.5(3)**, introductory sentence, as follows:

102.5(3) Annually publish the names or positions and telephone numbers or other contact information of the designated investigator and alternate:

ITEM 5. Amend subrule **102.6(2)**, introductory sentence, as follows:

102.6(2) *Content of report.* The report shall be in writing, signed, and, if signed by a minor, witnessed by a person of majority age, and shall contain the following information:

ITEM 6. Amend subrule **102.8(4)** as follows:

102.8(4) The investigator shall interview the ~~alleged victim, the school employee named in the report, and any collateral sources who may have knowledge of the circumstance contained in the report~~ allegedly abused student, any witnesses or persons who may have knowledge of the circumstances contained in the report, and the school employee named in the report. The investigator shall exercise prudent discretion in the investigative process to preserve the privacy

interests of the individuals involved. To the maximum extent possible, the investigator shall maintain the confidentiality of the report.

ITEM 7. Amend subrule **102.9(1)** as follows:

102.9(1) Upon receipt of the report, the designated investigator shall make and provide a copy of the report to the person filing, to the student's parent or guardian if different from the person filing, and to the supervisor of the employee named in the report. The school employee named in the report shall receive a copy of the report at the time the employee is initially interviewed by any investigator. However, if this action would conflict with the terms of a contractual agreement between the employer and employee, the terms of the contract shall control. The designated investigator shall not interview the school employee named in a report of sexual abuse until after a determination is made that jurisdiction exists, the ~~alleged victim~~ allegedly abused student has been interviewed, and a determination made that the investigation will not be deferred under subrule 102.9(5).

ITEM 8. Amend subrule **102.9(3)** as follows:

102.9(3) The investigator shall notify the parent, guardian, or legal custodian of a child, in prekindergarten through grade six, of the date and time of the interview and of the right to be present or to see and hear the interview or send a representative in the parent's place. The investigator shall interview the ~~alleged victim~~ allegedly abused student as soon as possible, but in no case later than five days from the receipt of a report or notice of the allegation of sexual abuse. The investigator may record the interview electronically. The investigator shall exercise prudent discretion in the investigative process to preserve the privacy interests of the individuals involved. To the maximum extent possible, the investigator shall maintain the confidentiality of the report.